



Inter-American  
Commission on  
Human Rights

# Violence against LGBTI Persons



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “the Commission,” or “IACHR”) is concerned about the high levels of violence against lesbian, gay, bisexual, trans, and intersex (LGBTI) persons, or those perceived as such in the Americas and the lack of an efficient response from the States. This is evidenced by the lack of adoption of effective measures to prevent, investigate, sanction and provide reparations to acts of violence committed against LGBTI persons, under the due diligence standard. Even though the IACHR acknowledges some steps forward in some Member States of the Organization of American States (hereinafter “OAS”), violence against LGBTI persons is pervasive throughout the Americas.
2. This Report focuses particularly on the acts of physical violence committed against persons with non-normative sexual orientations, identities and gender expressions, or whose bodies vary from the standard for female and male bodies in the Americas. In relation to the acts of violence against lesbian, gay, bisexual and trans (LGBT)<sup>1</sup> persons, the IACHR highlights that these acts often show high levels of cruelty. For example, in several cases documented by the IACHR, the lifeless bodies of LGBT persons show signs of torture, mutilation of their genitalia; and their bodies have been quartered and marked with signs that indicate high levels of prejudice.
3. In this Report, the Commission focuses on violence against LGBT persons as a contextualized social violence in which the perpetrators’ motivation needs to be understood as complex and multi-faceted, and not only as a individual-based act. In this regard, the IACHR understands that acts of violence against LGBT persons, commonly referred to as “hate crimes,” homophobic or transphobic acts, are best understood under the concept of violence based on prejudice against non-normative sexual orientations and gender identities (hereinafter “violence based on prejudice”). *Violence based on prejudice* is a social phenomenon, addressed toward specific social groups, such as LGBT persons, it has a symbolic impact and sends a message of terror to the LGBT community in general. Similarly, the IACHR considers violence against intersex persons as being violence based on prejudice against bodily diversity, and more specifically against persons whose bodies differ from the socially accepted standard for female and male bodies.

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<sup>1</sup> The IACHR uses the *LGBTI* acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the *LGBT* acronym.

### Chapter 3

4. With respect to legislation that expressly criminalizes same-sex intimacy, the IACHR notes that eleven OAS Member States in the Commonwealth Caribbean maintain laws criminalizing private, consensual, adult sexual activity, and one such state has legislation that criminalizes cross-dressing, which has an impact on the lives of trans persons. Even if prosecutions are not common, the IACHR notes that this type of legislation contributes to an environment that condones discrimination, stigmatization, and violence against LGBT persons. These laws reinforce existing societal prejudices and increase the negative effects of such prejudices on the lives of LGBT persons, particularly in contexts where the violence based on prejudice against LGBT persons is pervasive. These laws provide a social sanction for abuse, breed intolerance, and have been used to justify arbitrary detention, police abuse, and extortion and torture. As a result, LGBT persons are drawn into the criminal justice system. Once such persons are incarcerated or otherwise implicated in the justice system, this situation can in turn give rise to further incidents of discrimination and violence. Further, the Commission is of the view that these legal provisions violate the principles of equality and non-discrimination, in accordance with international human rights law.
5. The IACHR urges the States of the region that still have laws criminalizing consensual sex and sexual intimacy between adults of the same sex, serious and gross indecency laws –in as much as they criminalize same-sex intimacy-, and legislation criminalizing cross-dressing, to repeal those laws, and, in the interim, to impose an explicit and formal moratorium on the enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten, extort or commit acts of violence against LGBT persons or those perceived as such.
6. The Commission has also received reports on the impact of laws against vagrancy and loitering, legislation seeking to protect “public morals,” or “public order,” or local misdemeanor codes that, while not directly criminalizing same-sex activity or trans persons, are often construed and applied to criminalize LGBT persons. Vague definitions of outlawed conduct open the door to arbitrary application and enforcement with respect to persons who are seen as defying socially established and traditional gender norms, particularly trans persons. For example the mere presence of a trans person in public may be interpreted as an “obscene exhibition” by police – or same-sex couples publicly displaying affection. These laws, via highly subjective and prejudiced interpretations of the vague concept of “public morals” and similar terms, contained within them, facilitate police abuse, extortion, and arbitrary detention, particularly of trans sex workers, and often without effective judicial oversight.
7. The IACHR recommends that OAS Member States repeal legal provisions that penalize public conduct on the grounds of protecting vaguely defined concepts of “public morals,” and similar terms, which are applied disproportionately to LGBT persons and which have the effect of criminalizing them.

## Chapter 4

8. The Report describes the multiple forms of lethal and non-lethal violence against LGBTI persons including violations of the right to life in the form of extrajudicial executions by State actors, or with their acquiescence, and killings by non-State actors. The findings of a Registry of Violence prepared by the IACHR, during a fifteen-month period (between January 1, 2013 and March 31, 2014) suggest that the majority of the victims of killings and other serious acts of violence were gay men and trans women, or persons perceived as such. Serious non-lethal violence against LGBT persons is committed both by state and non-state actors but the IACHR has continuously received information about acts of violence against LGBT persons perpetrated by law enforcement agents, including acts of torture, degrading or inhumane treatment, excessive use of force, illegal and arbitrary detentions, and other forms of abuse. Illegal and arbitrary detention is another significant concern in the context of police abuse against LGBT persons.
9. The Report also addresses rape and other acts of sexual violence that LGBT persons are subjected to. The IACHR has received information concerning the related stigma faced by gay men who are victims of sexual violence, and the obstacles in reporting this violence. The Commission has also learned of instances of “corrective rape,” mostly targeting lesbian, bisexual, and trans women, or those perceived as such, including women who are perceived to be “masculine” or who defy traditional gender norms. Sexual violence, incorrectly called “corrective” is used to punish persons who defy traditional gender norms because of their sexual orientation, gender identity or expression. The IACHR found that the essence of this crime is the *punishment* for non-normative sexuality or non-conforming gender.
10. The Inter-American Commission is very concerned about information it has received concerning the human rights violations carried out against intersex persons because their bodies do not physically conform to the medically and culturally defined standards for “female” and “male” bodies. These include sex-assignment and genital surgeries that are performed without informed consent of intersex persons. Most of these procedures are reported to be irreversible in nature and aimed at attempting to “normalize” the appearance of the person’s genitals. Such surgeries and procedures have been reported to cause intersex children and adults great harm, including—but not limited to— chronic pain, life-long trauma, genital insensitivity, sterilization, and diminished or lost capacity for sexual pleasure. Often these surgeries result in forced or coerced sterilization. According to the information received, these interventions are standard practice in countries across the Americas. The IACHR also notes that there is limited access to justice for intersex persons and their families.
11. The IACHR recommends that OAS Member States make necessary amendments to law and policy to prohibit medically unnecessary medical procedures on intersex children and adults, when it is administered without their prior, free, and informed consent, except in cases of medical risk or necessity. Non-medically necessary surgeries and other medical

intervention should be delayed until intersex persons can decide for themselves.

12. Further, the information received by the IACHR points to instances in which LGBT persons or those perceived as such are subjected, usually by their parents or relatives, to psychotherapeutic treatment, internment in “clinics” or camps, and physical and sexual abuse, particularly targeting young women and adolescent girls. The Pan-American Health Organization (PAHO) and UN human rights experts have affirmed that such treatments serve no medical purpose and represent a severe threat to the health and human rights of the affected persons.
13. The IACHR and its Special Rapporteurship on Freedom of Expression reaffirm that the right to freedom of expression is important in order to guarantee the right to equality to groups that have suffered from historical discrimination. The Commission and its Special Rapporteurship also highlight that according to principles of pluralism and diversity, freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information considered inoffensive but also in cases of speech that is shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population. The American Convention on Human Rights (“American Convention” or “Convention”) establishes that freedom of expression *may* be limited to the extent necessary to ensure certain public interests or the rights of other persons. These limitations must be exceptional in nature, and comply with the requirements established in Article 13(2) of the American Convention. Specifically, Article 13(5) of the American Convention prohibits hate speech that constitutes “incitement to lawless violence or to any other similar action against any person or group.” The IACHR and its Special Rapporteurship affirm that Article 13(5) includes hate speech that incites lawless violence against a group on the grounds of sexual orientation, gender identity, and bodily diversity.
14. According to the standards established under the American Convention, speech cannot be prohibited simply because it expresses an inflammatory, stigmatizing, or offensive idea or opinion. Rather, it must specifically incite violence or other similar action before it rises to the level of an act that must be punishable under criminal law. The imposition of sanctions under the charge of advocacy of hatred – as prohibited by Article 13(5) of the Convention – requires a high threshold because, as a matter of fundamental principle, prohibition of speech must remain an exception. The IACHR and its Special Rapporteurship on Freedom of Expression highlight that a comprehensive approach that goes beyond legal measures and includes preventive and educational measures should be adopted to address and respond to hate speech. States should implement measures to strengthen the obligations of public broadcasters to serve the informational and expressive needs of this community, as well as to promote awareness of issues that concern them. States should also create an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that provide information to and voice needs of LGBTI persons. Further, States should establish appropriate sanctions for hate speech that incites lawless violence by public officials. Finally, the IACHR and its Special Rapporteurship recommend that States encourage media to play a positive role in

countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have historically suffered discrimination an opportunity to speak and to be heard.

## Chapter 5

15. The experiences of violence by lesbian, gay, bisexual, trans, and intersex persons are diverse. In this Report, the IACHR examines the situation of violence faced by persons at the intersection of non-normative sexual orientations, gender identities, and variations in sex characteristics, on the one hand, and the following factors on the other: ethnicity; race; sex; gender; migration status; age; status as a human rights defender; and poverty. These groups can suffer from a continuous cycle of violence and discrimination caused by impunity and a lack of access to justice. The situation of persons deprived of liberty is addressed in chapter four.
16. In this Report, the IACHR also notes that pervasive violence, prejudice, and discrimination in society at large and within the family hinder trans women's possibilities to access education, health care services, safe shelters, and the formal labor market. In turn, homelessness and exclusion from education and the formal labor market make trans persons more susceptible to diverse forms of violence. Violence against trans persons, particularly trans women, is the result of a combination of factors: exclusion, discrimination and violence within the family, regarding education, and in society at large; lack of recognition of their gender identity; involvement in occupations that put them at a higher risk for violence; and high rates of criminalization. Latin American organizations report that the life expectancy of trans women in the region is between 30 and 35 years of age. According to the data collected by the IACHR, 80% of trans persons killed during a 15-month period were 35 years of age or younger. The IACHR has received consistent reports showing that trans women who are sex workers are particularly vulnerable to community violence, including killings by individuals, their clients, illegal armed groups or gangs.
17. The IACHR notes as well that there is a strong link between poverty, exclusion, and violence. LGBT persons living in poverty are vulnerable to police profiling and harassment, and consequently to higher rates of criminalization and imprisonment. According to the information received, LGBT youth experience high levels of homelessness, which heightens their risk of being subjected to violence. The Commission notes that shelters and foster care group homes are often unsafe for LGBT persons, particularly trans and gender non-conforming persons. Further, the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirming surgeries and other related body modifications, which may be necessary to some trans persons in their process of constructing their identity.

## Chapter 6

18. States have various obligations with respect to violence against LGBTI persons, including measures to prevent, investigate, prosecute, punish and provide reparations. With respect to prevention, States must develop data collection

measures to study and assess the extent and tendencies of violence based on prejudice against LGBTI persons. There are certain measures that States should take regarding their legal framework which could have a concrete impact on prevention efforts, such as the adoption of hate crimes laws, the inclusion of sexual orientation and gender identity as factors which increase criminal penalties, and the legal prohibition of non-medically necessary surgeries or interventions on intersex children and adults, without informed consent. Despite the shortcomings in the implementation of hate crimes legislation, the IACHR considers that the enactment of these provisions has a symbolic impact in recognizing these types of violence and in sending a strong message to society as a whole that the State takes these crimes seriously.

19. Further in the area of prevention of violence, OAS Member States must adopt a legal framework to specifically protect persons from discrimination based on sexual orientation, gender identity, and bodily diversity. This framework must include non-discrimination laws, amendments to existing non-discrimination laws to include these grounds, and gender identity legislation. The right to equality and non-discrimination entails that States are not just obliged to provide equal protection before the law to all persons under their jurisdiction, but also that they must adopt legislative measures, public policies, and other measures that are necessary to guarantee the effective exercise of this right. In this trend, the Inter-American Commission and the Inter-American Court have interpreted that sexual orientation and gender identity are protected categories under “any other social condition” under Article 1.1 of the American Convention.
20. In this Report, the Inter-American Commission underscores how important it is for States to adopt measures to eradicate the stigma and negative stereotypes of LGBTI persons that fuel discrimination and violence against them. The IACHR has affirmed that positive public statements by State authorities are key in combating stigmatization of LGBTI persons, since States play a crucial role in leading social change to combat discrimination and social prejudices. State policies directed at educating the public about human rights with a gender and diversity perspective should not be restricted to educational environments. Rather, they should be crosscutting in every field in which the State operates. The Commission also underscores the importance of involving civil society in the development of public policies to address the human rights of LGBTI persons. LGBTI organizations, groups, and individuals should be systematically consulted and made part of decision-making processes in the drafting of policies and legal provisions that affect their rights.
21. Regarding criminal investigations, the Commission finds that there is significant underreporting of acts of violence against LGBTI persons in OAS Member States. According to the information received, in general terms, LGBTI persons and their relatives encounter numerous obstacles and barriers in accessing justice, including: ill-treatment by police officers when they attempt to report crimes; fear of retaliation and re-victimization (which affects victims, relatives and witnesses); fear of disclosing one’s sexual orientation or gender identity; lack of legal aid programs or limited availability of affordable, qualified and respectful legal counsel; and lack of sensitivity or

training of State officials who play a role in the justice system (“justice operators”), including judges and public prosecutors, among others.

22. When States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which can in turn fuel further violence and leads to victims’ mistrust of the justice system. The Commission notes that accurate statistics on conviction rates in cases of violence against LGBTI persons in countries in the region range from limited to non-existent. Lack of judicial statistics further complicates the analysis of situations of impunity in cases of violence against LGBTI persons. Nevertheless, several States and civil society organizations have compiled enough information to contrast the high number of killings with the low number of cases in which investigations were opened in those countries. Similarly, there is a great difference between the number of cases in which investigations were opened and those in which a final decision was handed down. The results that have been brought to the attention of the Commission speak of disturbing levels of impunity.
23. The IACHR has consistently received information concerning serious deficiencies in the investigation of cases of violence based on prejudice toward non-normative sexual orientations and gender identities. In more closely examining what is driving this impunity, the IACHR finds in this Report that there are deficiencies in the investigation and prosecution of these cases of violence throughout the region. These deficiencies include prejudice against non-normative sexual orientations and gender identities in the carrying out of the investigations themselves, and lack of a differentiated approach. The usual consequence of allowing biased assumptions to taint the investigative effort is that — instead of thoroughly collecting evidence and conducting serious and impartial investigations — police officers and other justice system agents direct their actions toward finding evidence that confirms their prejudiced theory of events, which in turn frustrates the purpose of the investigation and may lead to the invalidation of the proceedings. Such assumptions may also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all.
24. The IACHR has received information establishing that, due to prejudice in the justice systems in countries in the Americas, killings of LGBT persons, are not categorized as crimes motivated by prejudice, as often as they should be. For example, in the case of killings of lesbian, gay, and bisexual persons, they are often characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. With respect to trans persons, the investigations are generally biased and based on prejudice from the outset, characterized from the beginning as crimes solely related to criminal activity.
25. The IACHR acknowledges that there are challenges in determining whether or not such violence is based on prejudice, particularly in the absence of a confession of a prejudice-based motive. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence. Specific factors, referred-to in this Report, including particular types of evidence

and the presence of certain circumstances surrounding the violence, may be valuable in indicating the existence of such prejudice-based motivation. States must ensure from the very beginning of the investigation that there is an examination of the motives of the attack, and that this examination includes opening lines of investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims. Given the generalized context of violence, the IACHR is of the view that the investigations should be initiated under the theory that the crime was based on prejudice. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.

26. The Commission urges States to take all necessary measures to apply due diligence in preventing, investigating, and punishing violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, with the latter including education and health facilities. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to adopt all necessary measures in the search for the truth, in order to clarify what happened and unmask possible discriminatory motives.
27. The Commission is concerned about information it has received regarding courts in the region that have partially or fully excused crimes such as murder or assault against LGBT persons because the attacks in question were supposedly committed in response to non-violent same-sex sexual advances, or because of the gender identity of the victim. The IACHR urges OAS Member States to undertake the necessary legal and public policy changes to expressly establish that the sexual orientation, gender identity, or gender expression of victims can never be used to establish a partial or full justification of crimes committed against them.
28. The IACHR highlights that in addition to opening lines of investigation at the outset of the investigation that take into account whether the crime was committed based on prejudice, and to conduct investigations that are free of stereotypes related to diverse sexual orientations and gender identities; OAS Member States must take into account the general context of bias, prejudice, and violence against LGBTI persons in their countries, which may be more profound in places outside of the major cities. In addition, in conducting these investigations, State authorities should rely on expert witnesses who are able to identify the often nuanced discrimination and prejudice against LGBTI persons that is pervasive and embedded in the societies of the region. States are further encouraged to consult civil society organizations and LGBT activists in order to adequately craft protocols that set out the indicators of potential prejudice-motivated crimes that are relevant to investigations in the given country.
29. The IACHR calls on OAS Member States to adopt measures to guarantee that LGBTI victims of human rights violations and their relatives have effective access to reparations, in accordance with inter-American legal standards. States must design and implement reparations programs that take into account the specific needs of lesbian, gay, bisexual, trans, and intersex persons, and which are the result of consultative processes with civil society organizations that defend the rights of LGBTI persons.

CHAPTER 1  
INTRODUCTION



# INTRODUCTION

## A. *Background*

1. In the past years, the IACHR has been receiving increasing amounts of information on the human rights situation of lesbian, gay, bisexual, trans and intersex (LGBTI)<sup>2</sup> persons in the Americas. The sources of this information include oral and written presentations during public hearings, information received through visits by the Commission, petitions and requests for precautionary measures, and communication from other actors in the Inter-American System. The information received indicates that LGBTI persons, or those perceived as such, are subject to various forms of violence and discrimination based on the perception of their sexual orientation, their gender identity or gender expression, or because their bodies differ from the socially accepted standard for female and male bodies. These situations of violence and discrimination are in clear violation of their human rights as recognized in Inter-American and international human rights instruments.
2. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the Americas. The IACHR found that during a period of fifteen months (between January 2013 and March 2014) there were at least 770 acts of violence committed against LGBT persons,<sup>3</sup> which included 594 killings. As will be

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<sup>2</sup> The IACHR uses the *LGBTI* acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the *LGBT* acronym. As explained below, violence against LGBT persons is based on the perception of sexual orientations and gender identities that transgress socially accepted gender norms. Common forms of violence against LGBT persons include, but are not limited to, physical or sexual assault based on sexual orientation or gender identity, and police harassment or violence based on the same. Whereas violence against intersex persons stems from lack of recognition and acceptance of persons whose bodies differ from the socially accepted standard for male and female bodies, and most often takes its form in medically unnecessary surgeries or treatment carried out on intersex persons in the absence of their informed consent. While human rights violations faced by LGBTI persons have aspects in common, oftentimes violence faced by intersex persons is distinct from the violence that is experienced by LGBT persons. An intersex person can also be lesbian, gay, bisexual and/or trans, and as such could be the target of both violence directed at intersex persons and violence based on sexual orientation and/or gender identity.

<sup>3</sup> The IACHR did not receive information regarding killings or acts of violence committed against intersex persons during that period. The majority of acts of violence against intersex persons is the result of State-

discussed in Chapter 4 of the Report, the IACHR notes that the low number of complaints of acts of violence renders violence based on prejudice invisible throughout the region. Many of these attacks were committed with verbal violence motivated by prejudice based on the perception of the sexual orientation or gender identity of the victims. Acts of violence against LGBT persons, or those perceived as such, are particularly cruel and in some instances characterized by levels of brutality exceeding that of other hate crimes.<sup>4</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has noted “grotesque homicides” perpetrated with broad impunity, allegedly at times with the “complicity of investigative authorities.”<sup>5</sup> According to the information received and as will be examined in this Report, there are high levels of impunity regarding this violence.

3. As a result of several years’ work by civil society organizations in the context of the Organization of American States (OAS) political bodies, and particularly thanks to the work of the Coalition of LGBTTTTI Organizations of Latin America and the Caribbean,<sup>6</sup> the OAS General Assembly adopted a historic resolution on human rights, sexual orientation and gender identity in 2008.<sup>7</sup> In consecutive years, the OAS General Assembly adopted other resolutions calling on OAS Member States to eliminate all forms of discrimination and violence against LGBTI persons.<sup>8</sup> In these resolutions, Member States gradually agreed on key issues such as the need to: prevent and investigate crimes against LGBTI persons and bring their perpetrators to justice; produce data on violence against LGBTI persons; protect human rights defenders; guarantee access to justice for LGBTI persons; adopt public policies to combat discrimination against persons based on their sexual orientation or gender identity; ensure access to political participation by LGBTI persons; avoid undue

approved medical protocols, and is not reported in the media, or denounced by the families or organizations. Further, feelings of shame and fear of societal discrimination, contribute to the invisibility and secrecy around these acts of violence against intersex persons. IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>4</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153. December 17, 2014. UN, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/20/16, May 23, 2012, para. 71. OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 22. OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 23.

<sup>5</sup> UN, Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum: Mission to Mexico*, Christof Heyns, A/HRC/26/36/Add.1, April 28, 2014, para. 85, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 26.

<sup>6</sup> This Coalition encompasses several organizations working on sexual orientation, gender identity and bodily diversity from Latin America and the Caribbean region, and conducting advocacy before the OAS on these issues. The acronym *LGBTTTTI* stands for lesbian, gay, bisexual, *travesti*, transsexual, transgender, and intersex.

<sup>7</sup> OAS, General Assembly, *Human Rights, Sexual Orientation, and Gender Identity*, AG/RES. 2435 (XXXVIII-O/08), adopted at the fourth plenary session, held on June 3, 2008.

<sup>8</sup> OAS resolutions entitled *Human Rights, Sexual Orientation and Gender Identity* adopted in 2009 (AG/RES. 2504), 2010 (AG/RES. 2600), 2011 (AG/RES. 2653), and 2012 (AG/RES. 2721). OAS resolutions entitled *Human Rights, Sexual Orientation, and Gender Identity and Expression* in 2013 (AG/RES. 2807) and 2014 (AG/RES. 2863). All resolutions are available at the section “links” of the LGBTI Rapporteurship’s website: [www.iachr.org](http://www.iachr.org).

- interference with the private lives of LGBTI persons; and protect intersex people with respect to medical practices which may violate their human rights.
4. In 2010, as part of its Strategic Plan for 2011-2015, the IACHR adopted a Plan of Action specifically addressing the rights of LGBTI persons. In March 2011, the IACHR decided to give special thematic emphasis to the rights of LGBTI persons, stating that “the Commission has confirmed that LGBTI persons face serious discrimination, both in fact and in law, in the countries of the region. Among other violations, the IACHR has received information about murders, rapes, and threats to which LGBTI persons are victims. [Further], LGBTI persons face significant barriers in their access to health, employment, justice, and political participation.”<sup>9</sup> In November 2011, the Inter-American Commission created a specialized unit within its Executive Secretariat (the Unit on the Rights of LGBTI Persons, hereinafter “the LGBTI Unit”), and in November 2012, it designated Commissioner Tracy Robinson to be in charge of the LGBTI Unit.
  5. On November 8, 2013, the IACHR established the Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons<sup>10</sup> to ensure specialized attention to this work.<sup>11</sup> On February 1, 2014, the LGBTI Rapporteurship became fully operational, continuing the work of the former LGBTI Unit.<sup>12</sup> The LGBTI Rapporteurship has four pillars of work: (i) preparation of regional, sub regional and/or thematic reports on the human rights of LGBTI persons; (ii) processing of petitions claiming human rights violations based on sexual orientation, gender identity or bodily diversity; (iii) monitoring the human rights situation of LGBTI persons in the Americas; and (iv) providing specialized technical advice to OAS Member States and OAS political organs.<sup>13</sup>

## **B. Methodology of the Report**

6. In the drafting of this Report, the Commission has received valuable information from different sources on violence against LGBTI persons. Over the last ten years (between March 2005 and October 2015), the IACHR held 37 public hearings specifically devoted to the situation of LGBTI persons, and more than 16 public hearings in which the situation of the rights of LGBTI persons has been discussed within a broader context of human rights violations.<sup>14</sup> Between 2011 and 2013 the

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<sup>9</sup> IACHR, Press Release No. 115/11, *IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons*, November 3, 2011.

<sup>10</sup> Referred to in this Report as the “Rapporteurship on the Rights of LGBTI Persons,” the “LGBTI Rapporteurship,” or simply, “the Rapporteurship.”

<sup>11</sup> IACHR, Press Release No. 94/13, *IACHR creates Rapporteurship to address issues of sexual orientation, gender identity, gender expression and bodily diversity*, November 23, 2013.

<sup>12</sup> IACHR, Press Release No. 15/13, *IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) persons becomes fully operational and first Rapporteur duly designated*, February 19, 2014.

<sup>13</sup> More information on the LGBTI Rapporteurship is available at: <http://www.oas.org/en/iachr/igtbi/default.asp>.

<sup>14</sup> Public hearings before the IACHR (audio and video) are available at [www.iachr.org](http://www.iachr.org).

IACHR held six meetings of experts in order to identify the main challenges and best practices in the protection of the rights of LGBTI persons, particularly on the topics of health, violence and impunity, employment, political participation, education and culture, and families.<sup>15</sup> Further, in December 2014, the Commission published its findings of an analysis of 770 acts of violence committed against LGBT persons during a fifteen-month period (between January 1, 2013, and March 31, 2014), which informed this Report.<sup>16</sup> In the drafting of this Report, the IACHR has also relied on other sources of information, such as reports from governments, international organizations and experts, international and local civil society organizations, and news reports.

7. In October 2013, the IACHR issued a questionnaire to gather further information on violence against LGBTI persons, which also informed this Report.<sup>17</sup> The Commission received responses from 18 OAS Member States: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, United States, Uruguay and Venezuela.
8. The Inter-American Commission also received 34 responses from civil society organizations: *Asociación por los Derechos Civiles* (ADC), United Belize Advocacy Movement (UNIBAM), *Iguales ante la Ley*, *Casarão Brasil*, *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP), *Liga Humanista Secular do Brasil*, Egale Canada, *Fundación Iguales*, *Organización de Transexuales por la Dignidad de la Diversidad* (OTD), *Corporación Caribe Afirmativo*, *Colombia Diversa*, *Fundación Manos que Construyen Paz*, joint participation of Colombian organizations (*Colectivo Entre Tránsitos*, *Fundación Procrear*, *Fundación Santamaría*, *Grupo de Apoyo Transgenerista* (GAT), *Grupo YPAR*, *Escuela de Gobierno*, *Universidad de los Andes*, PAIIS - *Facultad de Derecho*, *Universidad de los Andes*), *Asociación Silueta X*, *TransLatin@ Coalition*, *Asociación de Mujeres Alas de Mariposas*, *Colectivo Transformación*, *Organización de Apoyo a una Sexualidad Integral frente al SIDA* (OASIS), Guyana Trans United (GTU), Society Against Sexual Orientation Discrimination (SASOD), *Madre*, *Red Lésbica Cattrachas*, Santa Clara University's International Human Rights Clinic, *Centro de Apoyo a las Identidades Trans A. C.*, *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México* (UNAM), GESSAC, *Centro de Derechos Humanos de la Facultad Libre de Derecho de Monterrey*, *Centro de Denuncias de VIH/SIDA y DDHH*, Promsex, Amnesty International, *Red Latinoamericana y del Caribe para Personas Trans* (Redlactrans), *Ovejas Negras*, *Acción Ciudadana contra el SIDA* (ACCSI), *Diverlex*, and *Fundación Reflejos de Venezuela*.<sup>18</sup>
9. The IACHR is grateful for the financial support provided by Chile, Denmark, Netherlands, United Kingdom, United States, the Joint United Nations Programme

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<sup>15</sup> Summaries, press releases and information regarding these meetings of experts are available at [www.iachr.org](http://www.iachr.org).

<sup>16</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>17</sup> The Questionnaire is available in English, Spanish, Portuguese and French at [www.iachr.org](http://www.iachr.org).

<sup>18</sup> Three people also provided responses to the questionnaire in their personal capacity: Tijon Cox, Ximena Gauché Marchetti, and Ronald Céspedes.

on HIV/AIDS (UNAIDS), and the Arcus Foundation, between 2011 and 2015. These important contributions allowed the Commission to further its work on the promotion and protection of the rights of LGBTI persons in the region, and were key in the preparation and adoption of this Report. Additionally, the IACHR acknowledges the support provided by the Cyrus R. Vance Center for International Justice, through its Human Rights and Access to Justice Program, and its collaborating firms and attorneys through the Pro-Bono Network of lawyers. This support came in the form of research on the legislation and jurisprudence of many countries in the region regarding the rights of LGBTI persons.

## C. Terminology

10. The Inter-American Commission takes note of the varied terms used to define and characterize persons and movements linked to diverse sexual orientations, gender identities and expression, and bodily diversity. This section outlines terminology commonly used to refer to these groups and identities, and that will be used in the present Report.

### 1. Diversity in orientations, identities and bodies

11. While the Commission has adopted an easily recognizable acronym to name its Rapporteurship, it is important to note that the Rapporteurship on the Rights of LGBTI Persons addresses human rights issues related to sexual orientation, gender identity, gender expression and bodily diversity. In this Report, the IACHR will also use other terminology such as *non-normative sexualities and identities* to refer to non-heterosexual and transgender identities that defy traditional gender norms. The Commission also embraces each person's self-identification as a guiding principle. Thus, it is possible that some persons who are the focus of the Rapporteurship's work may not identify themselves as belonging to the categories implied by the acronym "LGBTI." The IACHR also acknowledges that the terminology used in this Report may see greater or lesser usage in different regions within the Americas.
12. Some civil society organizations point out that the "LGBTI" acronym has weaknesses, chief among them being that it groups together persons who may face significantly different human rights violations.<sup>19</sup> This is readily apparent in the case of intersex persons, for example, because human rights violations faced by intersex persons are not represented when discussing issues of sexual orientation or gender identity. For this reason some intersex activists and human rights defenders oppose the association of intersex persons with LGBT groups and causes, especially when this linkage erases the unique issues intersex persons

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<sup>19</sup> Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, 2010, p. 14.

face.<sup>20</sup> As one civil society organization has pointed out, “like LGBT people, intersex people experience stigmatization and discrimination because they fall outside of expected binary sex and gender norms. Intersex is part of LGBTI because of bodily diversity and intersex status, not because of sexual orientation and gender identity.”<sup>21</sup> Further, this acronym, “may put out of sight culturally specific sexual and gender identities, giving the wrong impression that those identities originated in the West, and only recently.”<sup>22</sup>

13. There is ample documentation of the existence of Two-spirit and diverse ancestral sexualities in indigenous peoples and groups, prior to colonization.<sup>23</sup> Some indigenous groups and/or persons are known for their “gender diversity, which includes the fluid nature of sexual and gender identity and its interconnectedness with spirituality and traditional world views.”<sup>24</sup> Two-spirit persons have both feminine and masculine spirits. Two-spirit “recognizes gender as a continuum and includes diverse identities, sexual orientations and social roles.”<sup>25</sup> A two-spirit Native American may feel too restricted by the categories “lesbian” or “gay” because of their “personhood, spirituality, and specific, complex identities.”<sup>26</sup> The term *muxe* or *muxehe* in the Zapotec cultures of Oaxaca, in southern Mexico, is often used to refer to a person assigned male at birth who dresses and behaves according to a female gender identity, as it is socially and culturally viewed. Generally, *Muxe* is seen as a third gender.<sup>27</sup> As a *muxe* person told the IACHR, “we want to be named from a different place, from our place of origin. In my case as a *Muxe*, I do not fit in the LGBT acronym; I have no representation.”<sup>28</sup>
14. Further, the IACHR is aware that there are multiple notions of sexuality and sexual orientation that do not necessarily fall into predetermined notions of persons being heterosexual, gay, lesbian or bisexual. For example, the Inter-American Commission takes note of accounts of *Mati* workers in Suriname, whose roots are traced back to West Africa. The term *Mati* has been used to broadly and generally

<sup>20</sup> See Interview with Mauro Cabral, “*Poéticas y Políticas de la Intersexualidad*,” October 8, 2014, (available in Spanish only).

<sup>21</sup> Carpenter, M., Hough, D. *Employer’s Guide to Intersex Inclusion*, Sydney: Pride in Diversity and Organisation Intersex International Australia, Sydney, Australia, 2014.

<sup>22</sup> Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, Washington, United States, 2010, p. 14.

<sup>23</sup> Fundación Diversencia, *The State of Human Rights of LGBTI Persons of Diverse Ancestry in the context of Indigenous Peoples in Abya Yala*, presented at a public hearing during the 147<sup>th</sup> Period of Sessions of the IACHR, March 16, 2013. Hearing requested by “Fundación Diversencia”.

<sup>24</sup> National Aboriginal Health Organization (NAHO), *Suicide Prevention and Two-Spirited People*, 2012, p. 2, citing Walters, K. L., Evans-Campbell, T., Simoni, J., Ronquillo, T., & Bhuyan, R. “My spirit in my heart”: Identity experiences and challenges among American Indian two-spirited women. *Journal of Lesbian Studies*, 10, 125–149, 2006.

<sup>25</sup> National Association of Friendship Centres, Supporting two-spirited peoples: Discussion paper (Ottawa, 2008).

<sup>26</sup> Lang, Sabine. *Lesbians, Men-Women and Two-Spirits: Homosexuality and Gender in Native American Cultures*, in Blackwood, Evelyn and Wieringa, Saskia E. *Female Desires: Same-sex Relations and Transgender Practices across Cultures*, New York, United States: Columbia University Press, 1999, p. 93.

<sup>27</sup> Chiñas, Beverly. *Isthmus Zapotec attitudes toward sex and gender anomalies*, in Stephen O. Murray (ed.). *Latin American Male Homosexualities*, Albuquerque, United States: University of New Mexico Press, 1995, pp. 293-302. See also, The Advocate, *The Striking Muxe: Mexico’s Third Gender*, March 11, 2014.

<sup>28</sup> Testimony of Amaranta Gómez Regalado during a public hearing at the 147<sup>th</sup> Period of Sessions of the IACHR, March 16, 2013. Hearing requested by Fundación Diversencia. Video and audio available at: [www.iachr.org](http://www.iachr.org).

define “working class-women who typically have children and engage in sexual relationships with men and with women, either consecutively or simultaneously.”<sup>29</sup> The fluidity of sexual behavior is an essential element of *Mati work*, and the concept of *Mati* itself is not deemed to be a static identity.<sup>30</sup> Further, *Mati work* also challenges many conventional conceptions of sexuality and gender by demonstrating that it is possible to have a female gender identity without a fixed sexual orientation.<sup>31</sup> Other accounts of women-loving women, who do not necessarily identify as lesbians, have been recounted in Dominica, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago.<sup>32</sup>

15. The IACHR takes note of the complexity and diversity of sexual orientations, gender identities and bodies. In this Report, the Inter-American Commission examines the situation of violence faced by persons based on the perception that their sexual orientation, and/or gender identity or gender expression defy traditional gender norms and roles, or because their bodies differ from those of the standard concepts of female and male. Since this violence is based on the perception that other persons have on the orientations, identities, expressions and bodies, this violence manifests itself regardless of whether the person who is the victim of violence self-identifies as lesbian, gay, bisexual, trans or intersex.

## 2. Sex as a Social Construct

16. The Commission notes the rich development in intersex and queer scholarship of the idea of “sex” as a socially constructed concept, which is key to understand the violations of human rights of intersex persons. This idea transcends the concept of sex as male or female, and as a biological phenomenon. Under this theory, sex assignment is not an innate biological fact; rather, persons are socially assigned a sex at birth based on the perception others have of their genitals. While in most cases persons are easily classified as female or male, some presentations of the body are perceived as “ambiguous,” and the sex assignment is not immediate. The “anatomic sex, and its presumed dichotomy (male/female), are the result of an ideological reading.”<sup>33</sup> Moreover, “labeling someone as a man or a woman is a social decision. We may use scientific knowledge to help us make the decision, but only our beliefs about gender – not science – can define our sex. Further, our beliefs about gender affect what kinds of knowledge scientists produce about sex in the first place.”<sup>34</sup> This “gender ideology” precedes the reading of the genitals,

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<sup>29</sup> Wekker, Gloria. *The Politics of Passion: Women’s sexual Culture in the Afro-Surinamese Diaspora*, New York, United States: Columbia University Press, 2006, p. 173.

<sup>30</sup> Wekker, Gloria. *The Politics of Passion: Women’s sexual Culture in the Afro-Surinamese Diaspora*, New York, United States: Columbia University Press, 2006, p. 193.

<sup>31</sup> Wekker, Gloria. *The Politics of Passion: Women’s sexual Culture in the Afro-Surinamese Diaspora*, New York, United States: Columbia University Press, 2006, p. 173.

<sup>32</sup> Wekker, Gloria. *The Politics of Passion: Women’s sexual Culture in the Afro-Surinamese Diaspora*, New York, United States: Columbia University, 2006, pp. 220-221.

<sup>33</sup> Cabral, Mauro and Maffia, Diana. “*Los sexos ¿son o se hacen?*,” Buenos Aires, Argentina, 2013 (available only in Spanish; free translation by the IACHR).

<sup>34</sup> Fausto-Sterling, Anne. *Sexing the body*, New York, United States: Brown University, 2000, p. 3 (available only in Spanish; free translation by the IACHR).

implies the existence of a “natural sex,” and is sufficiently strong so as to “discipline the bodies that do not comfortably adapt to the reading that is expected of them.”<sup>35</sup> In this regard, in the cases of intersex persons even though doctors might take into account biological factors, sex assignment at birth is often the result of cultural considerations such as the “correct” size for a penis or vagina.<sup>36</sup>

17. Consequently, the concept of *intersexuality* has been developed to describe “all those situations in which an individual’s sexual anatomy does not physically conform to the culturally defined standard for the female or male body.”<sup>37</sup> Another definition states that intersex persons “are born with atypical variations in physical sex characteristics, including atypical genetic, hormonal or anatomical characteristics.”<sup>38</sup> In this context, bodily diversity refers to a wide range of presentations of the body which vary from the “standard body”, for example, variations in the sexual anatomy that expand beyond the cultural conceptions of how male and female bodies should be. Intersex is an umbrella term which encompasses this bodily diversity. In fact, there are many intersex variations, and at least 30 or 40 body presentations of intersex persons are known by science.<sup>39</sup> Intersex persons may identify as intersex, as men, as women, as neither or as both.<sup>40</sup>
18. In this regard the IACHR welcomes the position, articulated by the National Institute Against Discrimination, Xenophobia and Racism of the Ministry of Justice, Security and Human Rights of Argentina (referred to by its Spanish acronym INADI), that genitalia and sex assignment are two distinct concepts and there is no inevitable connection between them. INADI has said that the categorization of a man or a woman is a “social, cultural and institutional” act.<sup>41</sup>

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<sup>35</sup> Cabral, Mauro and Maffia, Diana. “*Los sexos ¿son o se hacen?*,” Buenos Aires, Argentina, 2013 (available only in Spanish; free translation by the IACHR).

<sup>36</sup> Cabral, Mauro and Maffia, Diana. “*Los sexos ¿son o se hacen?*,” Buenos Aires, Argentina, 2013. See also, Karkazis, Katrina. *Fixing Sex: Intersex, Medical Authority, and Lived Experience*, Durnham, United States: Duke University Press, 2008.

<sup>37</sup> Cabral, Mauro. Interview with Benzur, Gabriel. “*Cuando Digo Intersex. Un diálogo introductorio a la intersexualidad*,” 2005 (available only in Spanish; free Translation by the IACHR).

<sup>38</sup> Document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled *Intersex issues in the ICD: a revision*, drafted following a consultation held in Geneva on 8-9 September 2014, p. 2. See also, Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, 2010, p. 15.

<sup>39</sup> Document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled *Intersex issues in the ICD: a revision*, drafted following a consultation held in Geneva on 8-9 September 2014, p. 2. This statement also affirms that “most intersex characteristics are not pathological, but express healthy variation amongst human bodies.”

<sup>40</sup> Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, p. 15.

<sup>41</sup> INADI, Ministerio de Justicia y Derechos Humanos, Presidencia de la Nación, “*Buenas prácticas en la comunicación pública. Informes Inadi: Identidad de género*, [Minister of Justice and Human Rights, Office of the President, *Best Practices in public communication. INADI’s Report: gender identity*], 2011, p. 13 (available in Spanish only).

### 3. Sexual Orientation, Gender Identity, Gender Expression

19. A person's sexual orientation is independent from the sex assigned to that person at birth, and independent from that person's gender identity. The IACHR has indicated that sexual orientation "constitutes a fundamental component of the private life of an individual... There is a clear nexus between the sexual orientation and the development of the identity and life plan of an individual, including his or her personality, and [relationships] with other human beings."<sup>42</sup> The Inter-American Court has further indicated that person's sexual orientation is "linked to the notion of freedom and a person's right to self-determination and to freely choose the options and circumstances that give meaning to his or her existence, in accordance with his or her own choices and convictions."<sup>43</sup> According to the Yogyakarta Principles,<sup>44</sup> *sexual orientation* is defined as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."<sup>45</sup>
20. According to the Yogyakarta Principles, gender identity is "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."<sup>46</sup> *Trans persons* is the umbrella term often used to describe the different variants of gender identity (including transsexuals, *travestis*,<sup>47</sup> *transformistas*, among others), whose common denominator is that their sex assigned at birth does not match that person's gender identity.<sup>48</sup> Gender identity is not determined by body transformations, surgical interventions or

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<sup>42</sup> IACHR, *Application before the Inter-American Court of Human Rights in the case of Karen Atala and daughters*, Chile, Case 12.502, September 17, 2010, paras. 111 and 116.

<sup>43</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 136.

<sup>44</sup> The Yogyakarta Principles are a set of principles guiding the application of international human rights law in relation to sexual orientation and gender identity. The Principles were adopted by a diverse group of human rights experts, including judges, academics, a former UN High Commissioner for Human Rights, Special Procedures (independent human rights experts) of the UN Human Rights Council, independent experts, members of treaty bodies, NGOs and others. Yogyakarta Principles. *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006.

<sup>45</sup> Yogyakarta Principles. *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006, p. 6, fn. 1.

<sup>46</sup> Yogyakarta Principles. *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006, p. 6, fn. 2.

<sup>47</sup> There is a wide range of political positions around the use of the term *travesti* (as used in Spanish or Portuguese). Some groups of trans activists have pointed out that this term is derogatory, while other groups see the term *travesti* as a political term with great significance. See, for example, The Declaration of Feminist *Travestis*, XI Feminist Meeting of Latin-American and the Caribbean, Mexico City, Mexico, 2009.

<sup>48</sup> In Rothblatt, Martine A. *The Apartheid of Sex: A Manifesto on the Freedom of Gender*, New York, United States: Crown Publishers, 1995. Dr. Martine Aliana Rothblatt developed this generic category, which the trans social movement and academia have used as a term to encompass the various expressions of trans identity. See also Serano, Julia. *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity*, Emeryville, United States: Seal Press, 2007.

medical treatment. However, these could be considered necessary in the construction of the gender identity by some trans persons.

21. There is a certain degree of consensus concerning terms used by trans persons: the term *trans women* typically refers to persons whose sex assigned at birth was male while their gender identity is female; whereas the term *trans men* refers to persons whose sex assigned at birth is female while their gender identity is male. The term *trans person* could also be used by someone who self-identifies outside the male/female binary. Further, some trans women self-identify as women, and some trans men self-identify as men.
22. The term *gender expression* refers to the outward manifestation of one's gender. The International Commission of Jurists (ICJ) has indicated with respect to gender expression that "[t]he notion of what properly constitutes male or female norms has been a source of human rights abuses against individuals who do not fit or conform to the stereotypical models of masculine or feminine. Personal deportment, mode of dress, mannerisms, speech pattern, social behavior and interactions, (...) and the absence of an opposite-sex partner are all features that may subvert gender expectations."<sup>49</sup> It has further affirmed that gender expression is visible and can be a source of identification, especially when, through characteristics such as dress, mannerisms and modification of the body it subverts traditional expectations of gender expression.<sup>50</sup>
23. There are other terms that are also sometimes used such as *queer*<sup>51</sup> or *gender non-conforming persons*. The latter concept refers to persons who do not agree with or who do not follow the social ideas or stereotypes about how they should behave or express themselves based on the sex they were assigned at birth.<sup>52</sup> The terms *trans persons* or *gender non-conforming* can also be used as umbrella terms to include concepts such as transsexual, *travesti*, gender-queer, Two-Spirit, among others.<sup>53</sup> Nevertheless, not all trans persons are gender non-conforming and vice versa.

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<sup>49</sup> International Commission of Jurists, *Sexual Orientation, Gender Identity and International Human Rights Law*, Practitioners Guide No. 4, Geneva, 2009, p. 21.

<sup>50</sup> International Commission of Jurists, *Sexual Orientation, Gender Identity and International Human Rights Law*, Practitioners Guide No. 4, Geneva, 2009, pp. 132-133. See also, UN High Commissioner for Refugees (UNHCR), *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, para. 5.

<sup>51</sup> There are different approaches to the term *queer* as an identity category. It is used as an "umbrella term" by the range of sexual orientations and identities that go beyond the "LGBT" acronym. See, for example, Eli R. Green, Eric N. Peterson, *LGBTQI Terminology*, LGBT Resource Center, UC Riverside, 2003-2004. Likewise, the concept "gender-queer" is a general term for persons whose gender identity goes beyond the male/female binary. See Heartland Trans\* Wellness Group, *Trans and Queer/LGBTQPIA Terminology*, p. 5. Also, "queer movements" make reference to the exclusions, failures in the politics of representation and the effects of re-naturalization of all identity politics. If we can say that in a political sense, queer movements are "post-gay," then we can affirm that from a theoretical perspective, queer theory comes as reflection of the mistakes of feminism (both essentialist and constructive feminism) of the eighties: liberal feminism." See, e.g. Jesús Carrillo interviews Beatriz Preciado, "*Entrevista con Beatriz Preciado*," October 2004 (available only in Spanish; free translation by the IACHR).

<sup>52</sup> Sylvia Rivera Law Project, *Fact Sheet: Transgender and Gender Nonconforming Youth in School*, (last visited in May 2015).

<sup>53</sup> Sylvia Rivera Law Project, *Fact Sheet: Transgender and Gender Nonconforming Youth in School*, (last visited in May 2015).

CHAPTER 2  
UNDERSTANDING AND DEFINING  
VIOLENCE AGAINST LGBTI  
PERSONS



## UNDERSTANDING AND DEFINING VIOLENCE AGAINST LGBTI PERSONS

24. The Inter-American Commission notes that while there has been jurisprudence and decisions by international and regional human rights bodies on the concept of discrimination based on sexual orientation and gender identity, these have not yet adopted a comprehensive definition of prejudice-based violence regarding sexual orientation, gender identity, or bodily diversity. However, the IACHR notes that members of academia have developed useful concepts surrounding the issue of violence against LGBTI<sup>54</sup> persons, which may contribute to the development of approaches by international human rights bodies. In this chapter, the IACHR will first examine the main characteristics and particularities of violence against LGBTI persons. Second, the IACHR will address concepts such as heteronormativity, cisnormativity and the sex and gender binaries, as well as stigmatization and discrimination against LGBTI persons. Further, the IACHR will examine the concept of *violence based on prejudice* towards diverse sexual orientations, gender identities, and persons whose bodies defy the socially accepted standards of the “female” and “male” bodies. Finally, the IACHR makes reference to its decisions, jurisprudence by the Inter-American Court and from other bodies on the concept of violence in general and its link to women, taking into account that the only inter-American treaty that addresses violence against a specific sector of the population is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”).

### ***A. Features of Violence against LGBTI Persons***

25. Through its monitoring functions, the IACHR has learned about the different features and characteristics generally present in instances of violence against LGBTI persons. Many forms of this violence is based on the desire of the perpetrator to “punish” those identities, expressions, behaviors or bodies that transgress traditional gender norms and roles, or that run contrary to the binary system of male/female. Some targets of this violence include public displays of affection between same-sex couples; and perceived expressions of “femininity” in men or “masculinity” in women. The violence can manifest itself in the use of force by law enforcement agents pursuant to norms of “public morals.” It can also take the form of medical violence done to persons whose bodies differ from the socially

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<sup>54</sup> See above (Chapter 1). In this Report, the IACHR will use the LGBT or the LGBTI acronym depending on which groups or human rights violations it is making reference to.

accepted standard for female or male bodies in an attempt to “fix their sex”;<sup>55</sup> among other examples.

26. In this Report, the IACHR makes a special emphasis on violence against trans persons, and particularly trans women. As reiterated throughout the Report, the vast majority of trans women are immersed in a cycle of violence, discrimination and criminalization which generally begins at a early age, due to exclusion and violence they are subjected to in their homes, communities and educational institutions. This is coupled to the lack of recognition, in the majority of countries in the region, of their gender identity. Further, as explained in this Report, according to the information received and the data produced by the IACHR, trans women are killed mostly before 35 years of age and are particularly vulnerable to violence by law enforcement agents.
27. The UN High Commissioner for Human Rights has indicated that violence against LGBT persons constitutes “a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.”<sup>56</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that “a considerable proportion of the incidents of torture carried out against [LGBT persons] suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault, in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles.”<sup>57</sup> The Special Rapporteur further added that LGBT persons “are disproportionately subjected to torture and other forms of ill-treatment because they [do not] conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”<sup>58</sup> This is consistent with the information that civil society organizations have provided to the IACHR. For example, one organization indicated to the Commission that much of the violence and discrimination suffered by lesbian and trans women is perpetrated in order to punish female identities which trespass the limits imposed by normative societies.<sup>59</sup>
28. The expression of non-normative sexualities and identities is often in itself regarded with suspicion, considered a danger to society, or seen as a threat to social order and public morals. As it is explained by an academic, public expressions of affection or the uninhibited movement (*circulación*) in public spaces

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<sup>55</sup> OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 57.

<sup>56</sup> OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 20.

<sup>57</sup> UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 17.

<sup>58</sup> UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 19, citing UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 79.

<sup>59</sup> IACHR, Public Hearing on *Discrimination on the basis of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008. Video and audio not available.

of persons with non-normative sexual orientations or gender identities is often a cause of great social anxiety.<sup>60</sup> The IACHR has also received information on instances of violence against men and women in reaction to what were perceived to be sexual advances by someone of the same sex.<sup>61</sup> Sometimes this type of violence has been “justified” by defendants as “gay/trans panic defense,” an issue that is addressed later in this Report.<sup>62</sup> In contrast to same-sex advances being used as a justification for violence, “under the governing regime of heterosexuality, hitting on someone of the opposite sex would be defined as flirting and seen as an accepted model of behavior.”<sup>63</sup>

29. In certain situations, violence against LGBT persons has also been characterized as a form of “social cleansing.” Since as early as 1993 the IACHR has received information on this phenomenon in the context of the armed conflict in Colombia.<sup>64</sup> Academics in the Anglophone Caribbean have indicated that violence “levelled at gays, lesbians and others who are seen to dissent from acceptable social norms is... seen as a ‘cleansing’ exercise ... echoed in dancehall compositions which similarly call for a cleansing of the population through the murder of gays and lesbians.”<sup>65</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has affirmed that ill-treatment of LGBT persons is believed to have been used to make sex workers leave certain areas, in so-called “social cleansing” campaigns, or to discourage LGBT persons from meeting in certain places, including clubs and bars.<sup>66</sup>
30. Finally, the UN High Commissioner for Human Rights has indicated that, in many cases, even the “perception” of being gay or trans puts people at risk.<sup>67</sup> The African Commission on Human and Peoples’ Rights adopted a 2014 Resolution condemning violence against persons based on “their imputed or real sexual orientation or gender identity,” and called on African Union States to prevent and investigate this type of violence.<sup>68</sup> Accordingly, the IACHR has determined that in some situations it is “not so much whether a person recognizes himself or herself

<sup>60</sup> Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, pp. 185-186 [Free translation by the IACHR].

<sup>61</sup> See, e.g., Gaystarnews, *Brain damaged victim of 2009 Vancouver gay bar bashing has died in nursing home*, February 4, 2015.

<sup>62</sup> In some instances, judges have mitigated sentences on the grounds that advances of this nature allegedly occasioned disgust, which then led to the violence. See Nussbaum, Martha C. *Hiding from Humanity: Disgust, Shame, and the Law*. Princeton, United States: Princeton University Press, 2004, pp. 130-134.

<sup>63</sup> Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, p. 185-186 [Free translation by the IACHR].

<sup>64</sup> IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993, Chapter VII.

<sup>65</sup> Gosine, Andil. *Speaking Sexuality*, in Barrow, Christine, De Bruin, Marjan and Carr, Robert, *Sexuality, Social Exclusion and Human Rights*, Kingston, Jamaica: Ian Randle Publishers, 2009, p. 102.

<sup>66</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 18.

<sup>67</sup> OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 1.

<sup>68</sup> African Commission on Human and Peoples’ Rights, *275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, adopted at the 55<sup>th</sup> Ordinary Sessions, Luanda, Angola, April 28 - May 12, 2014.

as [gay], but rather whether he or she is “perceived” as such by third persons or is identified as a member of a given social group” that leads to acts of discrimination or violence motivated by prejudices against LGBT persons.<sup>69</sup> For example, in July 2012, the IACHR condemned the killing of José Leonardo Da Silva, a 22-year-old man who was killed by a group of men because he was seen walking with his arm around his twin brother.<sup>70</sup> The Commission has further determined that “the fact that a person may be perceived as having a sexual orientation other than heterosexual does not necessarily mean that this person identifies with that orientation; yet it does not rule out the possibility of being exposed to the discrimination to which persons have historically been subjected due to their sexual orientation or their gender identity or expression.”<sup>71</sup>

## ***B. Heteronormativity, Cisnormativity and the Binary Systems of Sex and Gender***

31. The IACHR finds that there are certain terms, which are key to explaining violence against LGBT persons, or those perceived as such. For example, *heteronormativity*<sup>72</sup> refers to the cultural bias in favour of heterosexual relationships, under which such relationships are deemed “normal, natural and ideal,” and are preferred over same-gender or same-sex relationships.<sup>73</sup> *Heteronormativity* is composed of legal, social, and cultural rules that require individuals to act according to dominant and ruling heterosexual patterns.<sup>74</sup> Regarding the impact of heteronormativity on women, “[s]exual stereotypes operate to demarcate acceptable forms of male and female sexuality, often privileging heterosexuality over homosexuality through stigmatizing lesbian relationships and prohibiting lesbian marriage and family formation, such as through artificial insemination or adoption.”<sup>75</sup> Also useful is the concept of “sex

<sup>69</sup> IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, para. 82.

<sup>70</sup> IACHR, Press Release No. 84/12, *IACHR Condemns Attack and Murder Based on Perceived Sexual Orientation in Brazil*, July 11, 2012.

<sup>71</sup> IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, para. 83. Discrimination and violence against persons based on the association others make, and regardless of self-identification, has been addressed in other cases decided by the Inter-American Court that were not directly related to sexual orientation or gender identity. The Inter-American Court has noted that: “[i]t is possible for a person to feel discriminated by the way other people think about its relation to a group or social sector, independently of whether such perception corresponds to reality or to the victim’s self-identification.” I/A Court H.R., *Case of Perozo et al. v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 380.

<sup>72</sup> Warner, Michael. *Introduction: Fear of a Queer Planet. Social Text*; No. 29, Durham, United States: Duke University Press, 2010, pp. 3–17. See also Chambers, Samuel A., *Telepistemology of the Closet; Or, the Queer Politics of Six Feet Under*. *Journal of American Culture*; No. 26.1: 24–41, 2003. See related academic developments around the concept of *compulsory heterosexuality*, see Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*. *Journal of Women in Culture and Society*; Vol 5, No. 4, Chicago, United States: The University of Chicago Press, pp. 631-60, 1980.

<sup>73</sup> UNESCO, Review of Homophobic Bullying in Educational Institutions, 2012, p. 50.

<sup>74</sup> Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, Washington, United States, 2010, p. 95.

<sup>75</sup> Cook, Rebecca and Cusack, Simone. *Gender Stereotyping: Transnational Legal Perspectives*, University of Pennsylvania Press, Philadelphia, United States, 2010, p. 27.

hierarchy,” under which certain expressions of sexuality, such as heterosexuality, are deemed “good, normal, natural, blessed,” while other forms, such as homosexuality, are deemed “bad, abnormal, unnatural, damned.”<sup>76</sup> In other words, “heterosexuality is seen as the natural sexuality and the successful sexual outcome for treated children; penile-vaginal intercourse as the exclusive or more important sexual act; and genital appearance as taking priority over sexual pleasure and sensation.”<sup>77</sup>

32. With respect to gender identity, the term *cisnormativity* (the “cis” prefix being the antonym of the “trans” prefix)<sup>78</sup> has been used to describe “the expectation that all people are cissexual [or cisgender], that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women.”<sup>79</sup> Cisnormative assumptions are so socially and culturally pervasive that that they are difficult at first to even recognize and identify.<sup>80</sup> At issue are deeply and widely held assumptions that all persons are either male or female and that this element defines a person’s sex, gender, gender identity and sexual orientation.<sup>81</sup>
33. Regarding the role of law in these social processes, the IACHR notes that the legal framework in the Anglophone Caribbean in relation to crimes and the family “is progressively more punitive towards those who step outside the boundaries of what is deemed acceptable sex, and affirming of those who meet heteronormative standards of family.”<sup>82</sup> The IACHR also notes that although women’s bodies “have been primary sites of moral regulation since, at least, the colonial era,” men’s bodies have not escaped this. In this regard, men have faced violence stemming from “nationalist anxieties in Anglo-Caribbean states ... [which] are a production of a patriarchal power that collapses gender with sex and inscribes male and female bodies with fixed functionalities.”<sup>83</sup>
34. Finally, the binary systems of gender/sex has been referred to as a social and cultural model dominant in western culture which “considers gender and sex as consisting of two, and only two, rigid categories, namely male/man and

<sup>76</sup> Rubin, Gayle. *Chapter 9: Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *Pleasure and Danger: Exploring Female Sexuality*, Telford, United States, 1984, p. 153.

<sup>77</sup> Karkazis, Katrina. *Fixing Sex: Intersex, Medical Authority, and Lived Experience*, Durnham, United States: Duke University Press, 2008, p. 139.

<sup>78</sup> From Latin: “trans” (across, on the other side of); “cis” (on this side of).

<sup>79</sup> Bauer, Greta R., Rebecca Hammond, Robb Travers, Matthias Kaay, Karin Hohenadel, and Michelle Boyce. 2009. ‘I don’t think this is theoretical; this is our lives’: How erasure impacts health care for transgender people. *Journal of the Association of Nurses in AIDS Care*, 20(5): 348–61, cited in <https://cisnormativity.wordpress.com>.

<sup>80</sup> Bauer, Greta R., Rebecca Hammond, Robb Travers, Matthias Kaay, Karin Hohenadel, and Michelle Boyce. 2009. ‘I don’t think this is theoretical; this is our lives’: How erasure impacts health care for transgender people. *Journal of the Association of Nurses in AIDS Care*, 20(5): 348–61, cited in <https://cisnormativity.wordpress.com>.

<sup>81</sup> Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, Washington D.C., United States, 2010, p. 95.

<sup>82</sup> Robinson, Tracy. *Authorized Sex: Same-Sex Sexuality and Law in the Caribbean*, in Barrow, Christine; De Bruin, Marjan and Carr, Robert. *Sexuality, Social Exclusion and Human Rights*, Kingston, Jamaica: Ian Randle Publishers, 2009, p. 19.

<sup>83</sup> Gosine, Andil. *Speaking Sexuality*, in Barrow, Christine; De Bruin, Marjan and Carr, Robert. *Sexuality, Social Exclusion and Human Rights*, Kingston, Jamaica: Ian Randle Publishers, 2009, p. 98-99.

female/woman. Such a system or model excludes those who do not fit within the two categories,” namely, some trans or some intersex people.<sup>84</sup> These criteria are said to constitute value judgments of what males and females are supposed to be.<sup>85</sup> The IACHR notes that this has had a concrete and devastating effect on the lives of intersex persons, who are subjected to genital surgery and unnecessary medical treatment prompted not only by a desire to attempt to produce genitalia of the assigned sex, but also to “stabilize particular forms of sexual desire and behavior.”<sup>86</sup>

### C. *Stigma, Stereotyping and Discrimination*

35. The UN Special Rapporteur on the human right to safe drinking water and sanitation has developed a concept of stigma that is linked to power relations, a concept which the IACHR considers useful in the present context. She has stated that “[s]tigma relates closely to power and inequality, and those with power can deploy it at will. Stigma can broadly be understood as a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups ... Stigma attaches itself to an attribute, quality or identity that is regarded as “inferior” or “abnormal.” Stigma is based on a socially constructed “us” and “them” serving to confirm the “normalcy” of the majority through the devaluation of the “other.””<sup>87</sup> She further states that although what is considered “abnormal” changes over time and differs depending on the place, “the targets of stigma are always those who do not fit the social norm,” which in some instances is attached “to one’s gender or gender identity, sexual orientation, caste or race.”<sup>88</sup>
36. Commissioner Rose-Marie Belle Antoine from the IACHR affirmed, when referring to stigma related to HIV, that “stigma and discrimination can be addressed through these legal frameworks, and States must certainly work toward that goal; however, States need to educate, to inform, and to raise awareness, to develop a true culture of human rights.”<sup>89</sup> In this trend, the UN Special Rapporteur on the human right to safe drinking water and sanitation has stated that in order to tackle stigma it is necessary to raise awareness of stigmatizing practices pursued under “the

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<sup>84</sup> Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-Based Advocacy*, Washington, United States, 2010, p. 95. See also Butler, Judith. *Gender Trouble: Feminism and the subversion of identity*, Routledge, 1990.

<sup>85</sup> Cabral, Mauro. “*Pensar la intersexualidad, hoy*,” in Maffia, Diana (Ed.), *Sexualidades Migrantes: género y transgénero*, Argentina: Feminaria, 2003, p. 121.

<sup>86</sup> Karkazis, Katrina. *Fixing Sex: Intersex, Medical Authority, and Lived Experience*, Durnham, United States: Duke University Press, 2008, p. 138.

<sup>87</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realization of the human rights to water and sanitation, A/HRC/21/42*, July 2, 2012, para. 12.

<sup>88</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realization of the human rights to water and sanitation, A/HRC/21/42*, July 2, 2012, para. 13.

<sup>89</sup> Commissioner Rose-Marie Belle Antoine, Speech *Human Rights, HIV/AIDS and Discrimination in the Americas on the Occasion of the Exhibit of the AIDS Quilt at OAS Grounds in the Context of the World AIDS Conference*, July 23, 2012.

umbrella of culture, religion and tradition.”<sup>90</sup> She adds that “the interpretations of culture on which such practices are based are neither immutable nor homogenous and must therefore be challenged, including by questioning the legitimacy of those who perpetuate stigmatizing practices in the name of culture and uncovering the underlying power dynamics.”<sup>91</sup>

37. The concepts developed above are useful in explaining how laws are applied to the detriment of persons with diverse sexual orientations and identities (or the perception thereof), due to the use and reinforcement of harmful stereotypes. For example, the IACHR has addressed the stereotypes used by domestic courts in various countries in the region to deny certain human rights to lesbian and gay persons, or persons perceived as such. In its decision on a 2013 case involving a man who was separated from the armed forces under accusations that he allegedly engaged in a sexual act with another man, the IACHR established:

that the criterion used by the military authorities was based on an apparent incompatibility between homosexuality and the regime of military discipline and the military institution itself, without providing reasonable and objective reasons to justify that distinction. The Commission does not find the relationship between means and ends, as between punishing “acts of homosexuality” in the armed forces and upholding the military values sought to be protected, such as honor, dignity, discipline, and extolling civic-mindedness. Stating otherwise would imply ascribing a negative moral value to the sexual act between persons of the same sex itself, in addition to promoting the stigmatization of gay, lesbian or bisexual persons, those perceived as such, or those who maintain relations with persons of the same sex inside and outside the armed forces.<sup>92</sup>

38. In a case concerning the removal of children from the custody of a lesbian woman because of her sexual orientation, the Inter-American Commission and Court referred to the influence of negative stereotypes against lesbian mothers, and in particular, the prejudiced view that the expression of Karen Atala’s sexual orientation as a lesbian woman would have a harmful impact on her children. In that case the State alleged that removing the woman’s three daughters from her custody was in the best interest of the children. The Inter-American Court ruled that in cases of custody, the “best interest of the child” principle must be based on an assessment of specific parental behaviors and on proven damages to the child’s well-being, not on speculation. As such, the Inter-American Court found that “a determination based on unfounded and stereotyped assumptions about the parent’s capacity and suitability to ensure and promote the child’s well-being and

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<sup>90</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realization of the human rights to water and sanitation, A/HRC/21/42*, July 2, 2012, para. 65.

<sup>91</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realization of the human rights to water and sanitation, A/HRC/21/42*, July 2, 2012, para. 65.

<sup>92</sup> IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, para. 111. The IACHR noted that the victim maintains that he “ha[d] no information about the occurrence of such facts and that he does not self-identify [as gay].” (para. 81).

development is not sufficient to guarantee the legitimate goal of protecting the child's best interest."<sup>93</sup> On this point, the Inter-American Court concluded that considerations based on stereotypes regarding sexual orientation – which it defined as “preconceptions regarding the attributes, behaviors or characteristics of [gay persons] or the impact these may have on children” – are not admissible.<sup>94</sup>

39. Regional and international human rights organizations and experts have developed the concept of non-discrimination based on sexual orientation and gender identity. Notwithstanding these developments, the IACHR notes that under international law, with a few exceptions,<sup>95</sup> the concepts of “sexual orientation” and “gender identity” are not expressly included in international human rights treaties as prohibited grounds for discrimination. Consequently, when these rights began to come to the fore, international and regional human rights bodies analyzed these two categories under two long-standing prohibited grounds for discrimination, namely: discrimination by reason of “sex”;<sup>96</sup> and the open-ended clause prohibiting discrimination on the basis of “any other social condition.”<sup>97</sup> Further, the IACHR has likewise indicated that human rights treaties such as the American Convention are “living instruments” that must be interpreted in accordance with current times and evolving conditions. As such the Inter-American Commission and the Inter-American Court have found that *sexual orientation*<sup>98</sup> and *gender identity*,<sup>99</sup> are

<sup>93</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 111.

<sup>94</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 111.

<sup>95</sup> See e.g., the *Inter-American Convention against all Forms of Discrimination and Intolerance*, adopted at the Forty-Third regular session of the OAS General Assembly, on June 6, 2013. Further, the Inter-American Convention on Protecting the Human Rights of Older Persons includes specific reference to non-discrimination based on “different sexual orientations and gender identities,” (article 5, “Equality and non-discrimination for reasons of age”). OAS, General Assembly, *Inter-American Convention on Protecting the Human Rights of Older Persons*, Forty-fifth regular session, adopted at Washington D.C., June 15, 2015, signed that same day by Argentina, Brazil, Chile, Costa Rica and Uruguay.

<sup>96</sup> UN, Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992. See also, UN, Human Rights Committee, *Edward Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000, August 6, 2000) and *X v. Colombia*; and UN, Human Rights Committee, Communication No. 1361/2005: Colombia, CCPR/C/89/D/1361/2005.

<sup>97</sup> The UN Committee on Economic, Social and Cultural Rights (CESCR) has indicated that “‘Other status’ as recognized in article 2, para.2, includes sexual orientation. (...) In addition, gender identity is recognized as among the prohibited grounds of discrimination.” UN, CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20, July 2, 2009, para. 32. The European Court of Human Rights has held that sexual orientation and gender identity are covered under Article 14 of the European Convention on Human Rights, which establishes that “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” See ECtHR, *Identoba and Others v. Georgia*, No. 73235, Judgment 12 May 2015. ECtHR, *Salgueiro da Silva Mouta v. Portugal*, No. 33290/96, Judgment dated December 21, 1999. Final, March 21, 2000, para. 28. See also ECtHR, *Clift v. UK*, No. 7205/07, Judgment July 13, 2010. Final, November 22, 2010, para. 57; ECtHR, *Fretté v. France*, No. 36515/97, Judgment February 26, 2002. Final, May 2002, para. 32; ECHR, *Kozak v. Poland*, No. 13102/02, Judgment March 2, 2010. Final, June 2, 2010, para. 92; *J.M. v. United Kingdom*, (No. 37060/06), Judgment September 28, 2010. Final, December 28, 2010, para. 55; and ECtHR, *Alekseyev v. Russia*, No. 4916/07 25924/08 and 14599/09, Judgment October 21, 2010. Final, April 11, 2011, para. 108 (cited in I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 87).

<sup>98</sup> See IACHR, *Application before the Inter-American Court of Human Rights in the case of Karen Atala and daughters*, Chile, Case 12.502, September 17, 2010, paras. 90, 93 and 95.

covered by the phrase “other social condition” under Article 1.1 of the American Convention.<sup>100</sup> This is analogous to the inclusion of such categories in Article 9 of the Convention of Belém do Pará, discussed below.

40. There have also been developments in national legislation, for example, the inclusion of “intersex status” or “sex characteristics” as prohibited grounds for discrimination. In some cases these categories have been introduced expressly, and in other cases they have been interpreted to fall under the concept of discrimination on the basis of “sex.”<sup>101</sup>

## **D. Violence Based on Prejudice**

41. First, the Commission notes that the concepts of prejudice and stereotype are linked.<sup>102</sup> A stereotype has been defined as a “generalize[d] view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group.... [A] stereotype presumes that all members of a certain social group possess particular attributes or characteristics.... [Therefore] an individual, simply by virtue of membership in that group, is believed to conform to the generalized view or preconception.”<sup>103</sup> As to belonging to a social group, it has been established that “[gay persons] can be

<sup>99</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, paras. 84, 85, 91 and 93.

<sup>100</sup> Article 1(1) of the American Convention establishes: “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

<sup>101</sup> The first country to include specific reference to intersex persons in equality legislation was South Africa with a 2005 amendment to its 2000 Promotion of Equality and Prevention of Unfair Discrimination Act. This amendment established that the category ‘sex,’ includes ‘intersex.’ Similar legislation has been adopted in Germany, Finland, Scotland, the Autonomous Basque Community in Spain, and Malta. Perhaps the most well-known is the Australian Sex Discrimination Amendment of 2013. This law establishes that a person discriminates against another on the ground of the latter’s intersex status if the discrimination is based on: (a) the aggrieved person’s intersex status; or (b) a characteristic that appertains generally to persons of intersex status; or (c) a characteristic that is generally imputed to persons of intersex status; and if the discriminator treats the aggrieved person less favorably than, in similar circumstances, the discriminator treats or would treat a person who is not of intersex status. It also establishes that a person discriminates against another person on the grounds of the aggrieved person’s intersex status if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of intersex status. The legislation defines “intersex status” as the status of having physical, hormonal or genetic features that are (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. Parliament of the Commonwealth of Australia, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013, Act No. 98 of 2013. Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, pp. 44-45.

<sup>102</sup> In fact María Mercedes Gómez affirms that “a prejudice is the creation of a stereotype.” See Gómez, María M., *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia, Siglo del Hombre Editores, Red Alas, 2008, p. 99. [Free translation by the IACHR].

<sup>103</sup> Cook, Rebecca and Cusack, Simone. *Gender Stereotyping: Transnational Legal Perspectives*, Philadelphia, United States, 2011, p. 9.

within the ambit of a social group category, either as a group sharing a common characteristic or because they are perceived as a cognizable group in the society.”<sup>104</sup> The IACHR highlights that this same reasoning applies to persons with non-normative gender identities and expressions, including trans persons. Academically, the concept of *prejudice* has been deemed preferable to the concept of *homophobia* “because it [prejudice] conveys no assumptions about the motivations underlying negative attitudes, locates the study of attitudes concerning sexual orientation within the broader context of social psychological research on prejudice, and avoids value judgments about such attitudes.”<sup>105</sup>

42. *Hate crime* is another useful concept that has been developed to characterize violence against LGBT persons. The term *hate crime* became popular in 1990 in the U.S. with the passing of the Hate Crimes Statistics Act.<sup>106</sup> The passage of this legislation took place in the context of a wave of racially motivated crimes that were investigated by the Federal Bureau of Investigation (FBI).<sup>107</sup> The definition of *hate crime* is not universally agreed upon.<sup>108</sup> In Latin America, Uruguay has specifically included “sexual orientation” and “sexual identity,”<sup>109</sup> among other categories such as skin color, race, religion, and national or ethnic origin in its criminal law regarding hate crimes. The Uruguayan legislation defines hate crimes as “acts of moral or physical violence or scorn against one or more persons” based on these categories. In Uruguay, hate crimes carry an additional penalty of imprisonment (between six and twenty-four months), in addition to the penalty imposed for the crime committed.<sup>110</sup> Civil society organizations have adopted a more expansive concept of *hate crime* to include aggression based on rejection, intolerance, scorn, hate and/or discrimination.<sup>111</sup>

<sup>104</sup> United Nations High Commissioner for Refugees (UNHCR), *Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, Geneva, Switzerland, 2008, para. 3; United Nations High Commissioner for Refugees (UNHCR), *Advisory opinion on claims for sexual orientation to TheTokyo Bar Association*, September 3, 2004, para. 8, cited in IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, para. 82.

<sup>105</sup> Herek, Gregory. *The Psychology of Sexual Prejudice*, California, United States: University of California, 1999.

<sup>106</sup> The Hate Crime Statistics Act (28 U.S.C. § 534) defines hate crimes as “crimes that manifest evidence of prejudice based on race, gender or gender identity, religion, disability, sexual orientation, or ethnicity.” This Act was later amended in 2009 with the passage of the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act, Section 4708 of House Resolution 2647.

<sup>107</sup> CEJIL and Hivos, “*Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*,” [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua (available only in Spanish)], San José, Costa Rica, CEJIL, 2013, p. 15.

<sup>108</sup> CEJIL and Hivos, “*Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*,” [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua (available only in Spanish)]. San José, Costa Rica, CEJIL, 2013, p. 15.

<sup>109</sup> As examined in Chapter 6 of this Report, a number of OAS Member States have enacted penalty-enhancement laws for crimes committed based on sexual orientation and gender identity.

<sup>110</sup> Ley No. 17.677, “*Incitación al odio, desprecio o violencia o comisión de estos actos contra determinadas personas*,” which modified Article 149th, July 29, 2003. (Available only in Spanish). [Free translation by the IACHR]

<sup>111</sup> CEJIL (Center for Justice and International Law) and Hivos, “*Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*,” [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and (available only in Spanish).], 2013, p. 24.

43. The Commission has reiterated the link between discrimination and violence against LGBT persons, referring to “the concept of prejudice based on sexual orientation, gender identity, or gender expression” as a means of “understanding violence against [LGBT persons], as it makes it possible to identify the social context in which such violence manifests itself.”<sup>112</sup> In this regard, the IACHR expressed concern over an overall social context in the Americas that is characterized by stereotyped prejudice against LGBT persons. This context of prejudice, along with the failure to properly investigate such crimes, leads to an endorsement of violence against LGBT persons.<sup>113</sup>
44. *Violence based on prejudice* is a concept that signals an understanding of violence as a social phenomenon, as opposed to violence being understood as taking place in isolation.<sup>114</sup> Crimes based on prejudice are rationalizations or justifications of negative reactions, for example, to non-normative expressions of sexual orientation or gender identity. Such violence requires a context and social complicity; it is addressed toward specific social groups, such as LGBT persons, and it has a symbolic impact.<sup>115</sup> Even when this type of violence is directed against one person or a group of persons, a strong social message is addressed to the whole LGBT community.<sup>116</sup> The IACHR finds that the concept of *violence based on prejudice* is useful in understanding that violence against LGBT persons is the result of negative perceptions of such persons based on false generalizations, as well as negative reactions to situations that are foreign to “ours.”<sup>117</sup>
45. Not all acts of violence against LGBT persons can be characterized as violence based on prejudice. The IACHR notes the difficulties in determining whether or not such violence is based on prejudice. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence, as will be examined in chapter 6 of this Report.
46. In this Report, the IACHR examines States’ obligations to investigate and prosecute acts of violence against LGBT persons, and the challenges faced in this regard. The

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<sup>112</sup> IACHR, Press Release No. 134/A, *Annex to Press Release 134/12 on the 146<sup>th</sup> Regular Sessions of the IACHR*, November 16, 2012.

<sup>113</sup> IACHR, Press Release No. 134/A, *Annex to Press Release 134/12 on the 146<sup>th</sup> Regular Sessions of the IACHR*, November 16, 2012.

<sup>114</sup> Gómez, María Mercedes, *interview*, “Centro Latinoamericano de Sexualidades y Derechos Humanos,” 2007.

<sup>115</sup> Gómez, María Mercedes. “Capítulo 2: *Violencia por Prejuicio*” en *La Mirada de los Jueces: Sexualidades diversas en la jurisprudencia latinoamericana*. Tomo 2. Cristina Motta & Macarena Sáez, eds., Bogotá: Siglo del Hombre Editores, Red Alas, 2008. [Chapter 2: *Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008 (available only in Spanish). [Free translation by the IACHR], p. 99.

<sup>116</sup> Information presented to the IACHR by civil society organizations at Public Hearing on *Discrimination on the Basis of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008. See, Also, Gómez, María Mercedes, [Chapter 2: *Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008 (available only in Spanish). p. 185.

<sup>117</sup> Gómez, María Mercedes. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, p. 99.

Commission has received information establishing that, due to prejudice in the justice system in countries in the Americas, killings of LGBT persons are often not categorized as hate crimes or as being motivated by prejudice, as they should be. Instead they are characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. When crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim and away from the power structures that reproduce the homophobic stereotypes underpinning the prejudice.<sup>118</sup> The high prevalence of violence based on prejudice requires that crimes committed against LGBT persons receive full and unbiased investigation. Further, violence based on prejudice can take place in the context of an intimate relationship, whether same-sex or different sex. When someone who is lesbian, gay, bisexual or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims.

47. In this Report, the Commission will focus on violence against LGBT persons as a contextualized social violence in which the perpetrators' motivation needs to be understood as complex and multi-faceted, and not only as an individual or as an isolated act. In this sense, the IACHR understands that acts of violence against LGBT persons, commonly referred to as *hate crimes* (also referred to as *bias crimes*, *homophobic* or *transphobic acts*), are best understood under the concept of violence based on prejudice motivated by the perception towards non-normative sexualities and identities. Similarly, the IACHR considers violence against intersex persons as violence based on prejudice towards bodily diversity, and more specifically towards persons whose bodies are different from the standard for male and female bodies.
48. Societies in the Americas are dominated by underpinning principles of heteronormativity, cisnormativity, sex hierarchy, sex and gender binary systems, and misogyny. These principles, combined with widespread intolerance towards non-normative sexual orientations, gender identities and expressions, and diverse bodies, legitimize violence and discrimination against LGBTI persons or those perceived as such. Violence against LGBTI persons exists as a consequence of social contexts, societies and States which do not accept, and in fact may punish, non-normative sexualities, identities and bodies which do not fit the socially-accepted notion of what defines persons as either female or male. Given this inherent link between discrimination against LGBTI persons and violence against LGBTI persons, the IACHR in this Report urges OAS Member States to adopt comprehensive measures to combat societal and cultural discrimination, prejudice, and stereotypes against LGBTI persons.

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<sup>118</sup> Gómez, María Mercedes. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice's Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, p. 176 (available only in Spanish). [Free translation by the IACHR].

## E. Violence and Discrimination against Women

49. Finally, the Commission notes that the Convention of Belém do Pará is the only Inter-American instrument that includes a definition of violence against a particular group. The Convention of Belem do Pará defines “violence against women” as “any act or conduct, *based on gender*, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”<sup>119</sup> The Inter-American Court of Human Rights has held that discrimination against women includes “gender-based violence,” which has been defined as violence that is directed against a woman because she is a woman or which affects women disproportionately.<sup>120</sup>
50. Further, the Inter-American Court had indicated that in patterns of killings of women, violence can only be understood in the context of “socially entrenched gender inequality,”<sup>121</sup> influenced by a “culture of discrimination against women.”<sup>122</sup> Similarly, the IACHR is of the view that traditional social norms about gender and sexuality and pervasive societal discrimination towards non-normative orientations and identities, and persons whose bodies do not necessarily fit the socially accepted definitions of male and female bodies, fuel violence against LGBTI persons. As explained above, violence based on prejudice requires a socially enabling context.
51. The United Nations Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, has defined “institutional and structural violence” as “any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community.”<sup>123</sup> In this vein, she affirmed that “[s]ocietal beliefs that claim that one group of people is superior to another group can be a form of structural violence. Beliefs that perpetuate the notion that males are superior to females, that whites are superior to afro-descendants, that persons without physical or mental impairment are superior to those with disabilities, that one language is superior to another, and that one class position is entitled to rights denied to another, are all factors contributing to structural violence that have become institutionalized forms of multiple and intersecting

<sup>119</sup> OAS, General Assembly, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, adopted at Belém do Pará, Brazil on September 6, 1994. Entry into force on March 5, 1995, Article 1 (emphasis added).

<sup>120</sup> I/A Court H.R., *Case of the Miquel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 303. Along those same lines, see: I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009. Series C No. 205, para. 397. See also, UN, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 Violence against Women*, Doc. HRI/GEN/1/Rev. 1 at 84 (11th Session, 1992), para. 6.

<sup>121</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009, Series C No. 205, para. 134.

<sup>122</sup> UN, CEDAW Committee, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP. 8/MEXICO, January 27, 2005, p. 51.

<sup>123</sup> UN, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26*, May 2, 2011, para. 26.

discrimination in many countries.”<sup>124</sup> Similarly, societal beliefs and prejudices that perpetuate the notion that heterosexual, cisgender<sup>125</sup> and non-intersex persons are superior to LGBTI persons contributes to a culture of structural violence based on prejudice towards non normative sexual orientations, gender identities and diverse bodies.

52. Finally, the IACHR notes that sexual orientation and gender identity are not expressly included in the Convention of Belém do Pará. However, the IACHR is of the view that the Convention of Belém do Pará is a “living instrument.” Thus, the Commission considers that when Article 9 of the Convention of Belém do Pará<sup>126</sup> speaks of the State obligation to take special account of factors of special vulnerability to violence, listing certain examples “among others,” these other factors would necessarily include sexual orientation and gender identity.

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<sup>124</sup> UN, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26*, May 2, 2011, para. 28.

<sup>125</sup> Cisgender is the term used to refer to persons whose gender identity corresponds with the sex assigned at birth. Cisgender is the opposite of transgender.

<sup>126</sup> OAS, General Assembly, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, adopted at Belem do Pará, Brazil, on September 6, 1994. Entry into force on March 5, 1995, Article 9: establishes: “[w]ith respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.” (Emphasis added).

CHAPTER 3  
IMPACT OF LAWS THAT  
CRIMINALIZE LGBT PERSONS  
ON VIOLENCE



## IMPACT OF LAWS THAT CRIMINALIZE LGBT PERSONS ON VIOLENCE

53. In this chapter the Inter-American Commission examines the impact that criminalization of non-normative sexual orientations, gender identities and expressions has on violence against LGBT persons, or those perceived as such. The first part of this chapter examines legislation that specifically criminalizes consensual same-sex intimacy and non-normative gender identities. The second part focuses on the impact on violence against LGBT persons –particularly trans persons– of laws aimed at protecting “public morals,” and similar legislation.
54. The IACHR recognizes the existence of other legislation that discriminates against LGBT persons. Examples include legislation prohibiting entry into countries based on sexual orientation,<sup>127</sup> legislation establishing different ages of consent for same-sex and different-sex sexual activity,<sup>128</sup> and sanctions in military or police codes against same-sex sexual activity.<sup>129</sup> Taken as a whole, discriminatory legislation

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<sup>127</sup> The IACHR has expressed concern regarding legislation in Belize and Trinidad and Tobago prohibiting the entry of “homosexual persons” into those countries. IACHR, Press Release No. 131A/14, *Report on the 153<sup>rd</sup> Sessions of the IACHR*, December 29, 2014.

<sup>128</sup> The *age of consent* refers to the age at which someone is considered to be legally competent to consent to sexual acts. Some age of consent laws in the region have different ages of consent for (1) same-sex versus opposite-sex activity or (2) anal sex versus other types of sex. Some of these include: [The Bahamas] Sexual Offences and Domestic Violence Act (1991), Section 16(1)(2). Consent for opposite-sex: 16; consent for same-sex: 18; [Canada]: Criminal Code, Section 159(2)(b), R.S.C., 1985, c. C-46. Consent for anal sex: 18; consent for other types of sex: 16. Courts in Ontario, Quebec, and Alberta have declared s. 159 to be unconstitutional as violations of the equality provision of the Canadian Charter of Rights and Freedoms; [Chile] Criminal Code, Article 365. Consent for opposite-sex: 14; consent for same-sex: 18; [Paraguay] Criminal Code, Article 138. Consent for opposite-sex: 14; consent for same-sex: 16. [Suriname] Criminal Code, Section 302. Consent for opposite-sex: 16; consent for same-sex: 18.

<sup>129</sup> The IACHR received reports about at least four countries in which same-sex activity is directly prohibited in the military or indirectly punished with a disciplinary sanction in the police forces: [Brazil] Military Penal Code, Article 235, criminalizes “pederasty” (“pederastia”), which is to “practice or engage in lewd acts, homosexual or not, in a place under military administration” and establishes a 6 to 12 month detention. The Code dates from 1969, when women were not allowed to join army forces, therefore civil society claims that the term “pederasty” was used to restrict same-sex activity (Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Liga Humanista Secular do Brasil*, received by the IACHR Executive Secretariat on December 24, 2013). Currently, there is a lawsuit pending before the Supreme Court (“*Ação de Descumprimento de Preceito Fundamental - ADPF*”), requesting that this provision be declared unconstitutional; [Peru] Decree 1.150 regulates disciplinary sanctions in the National Police and establishes expulsion due to “same-sex activity” or sex which “causes scandal and deterioration of the institution’s image”; [Dominican Republic] Law 285 adopted in 1966, Article 210. The Chief of Police of Santo Domingo has arguably stated that LGBT individuals were not eligible to join the police force because of a prohibition of sodomy between officers of the same sex (Human Rights Observatory for Vulnerable Groups

can contribute to a social environment in which it is understood that violence against LGBT persons is tacitly permitted or tolerated, this Report focuses on the subset of discriminatory laws that have the most direct impact on violence against LGBT persons.

## **A. Legislation Criminalizing Same-Sex Intimacy and Non-Normative Gender Identities**

55. First, the IACHR highlights that the main focus of this section is to address the link between legislation criminalizing consensual same-sex intimacy and non-normative gender identities, on the one hand, and violence against LGBT persons, on the other. This chapter focuses on the negative impact of the violation to the rights to life and personal integrity of LGBT persons, or those perceived as such. Nevertheless, the IACHR makes some preliminary comments with respect to the rights to equality and non-discrimination, health and other human rights.
56. In May 2014, the IACHR indicated that it was concerned about the impact of legislation that criminalizes same-sex consensual intimacy in Jamaica and Belize—even when not enforced—particularly with respect to the rights to life, personal integrity, personal liberty, privacy, and access to health and other services.<sup>130</sup> Further, it is noteworthy that although the legal restrictions in the countries in the Commonwealth Caribbean relate to the act of intercourse itself; and that the law, formally at least, does not target a person’s status or being, they generally hinder people’s capacity to find work and maintain work.<sup>131</sup>
57. In July 2012, in an event organized jointly by the OAS, the IACHR and UNAIDS, Commissioner Rose-Marie Belle Antoine noted

Of particular note is that several OAS Member States continue to have discriminatory laws criminalizing consensual adult same-sex conduct, [...] and laws that discriminate based on sexual orientation and gender identity, which negatively impacts on the full enjoyment and exercise of [LGBT persons] of their human rights -including their right to highest attainable standard of health- and severely undermine effective national responses to HIV. The dire impact of the buggery laws on the human rights of persons most at risk for contracting HIV, such as men who have sex with men and sex

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*et. al*, Discrimination and violence towards Transgender women in the Dominican Republic, 27 October 2014, p. 3).

<sup>130</sup> IACHR, Press Release No. 35A/14, *Report on the 150<sup>th</sup> Regular Sessions of the IACHR*, May 13, 2014. See also, statements by the IACHR following hearings on the human rights situation in Belize, Guyana, Jamaica, and Trinidad and Tobago, and the impact that this legislation and other laws have on the enjoyment of human rights of LGBT persons in: IACHR, Press Release No. 131A/14, “*Report on the 153rd Sessions of the IACHR*,” December 29, 2014. IACHR, Press Release No. 83A/13, *Annex to the Press Release issued at the Close of the 149<sup>th</sup> Regular Sessions*, November 8, 2013.

<sup>131</sup> Commissioner Rose-Marie Belle Antoine, Speech *Stigma and Discrimination based on Sexual Orientation and Gender Identity in the Commonwealth Caribbean*, October 11, 2012.

workers and on persons living with HIV is an issue of deep concern to the Commission.<sup>132</sup>

58. The IACHR notes that former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has indicated that this type of legislation adversely affects the enjoyment of the right to health of persons who engage in same-sex sexual activity, for example by negatively impacting their health-seeking behaviour and their mental health.<sup>133</sup> The European Court of Human Rights<sup>134</sup> and the South African Constitutional Court<sup>135</sup> have also referred to this impact on the mental health of LGBT persons (in the form of anxiety, guilt and depression) that is brought about by the mere existence of laws criminalizing same-sex intimacy. These laws can also have a dire effect on the implementation of public health policy, including in the context of persons deprived of liberty.<sup>136</sup>
59. In 2012, the IACHR, the Inter-American Commission on Women, UNAIDS and the Pan-American Health Organization (PAHO) expressed concern over the link between criminalization of consensual same-sex intimacy and the HIV epidemic, because of pervasive social stigma and discrimination. These organizations affirmed that legislation and public policies in force in several OAS Member States have a dire impact on the full exercise of human rights by key populations at higher risk of HIV infection and persons living with HIV, and constitute the main barrier to achieving Universal Access to HIV related services, including prevention and treatment.<sup>137</sup>
60. With regard to legislation that prohibits sex and intimacy between consenting adults of the same sex, the IACHR takes note of decisions by the UN Human Rights Committee<sup>138</sup> and the European Court of Human Rights<sup>139</sup> that such legislation —

<sup>132</sup> Commissioner Rose-Marie Belle Antoine, Speech *Human Rights, HIV/AIDS and Discrimination in the Americas On The Occasion Of The Exhibit Of The Aids Quilt At Oas Grounds In The Context Of The World Aids Conference*, July 23, 2013.

<sup>133</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, A/HRC/14/20, April 27, 2010, para. 17. Further, “[v]iolence can inhibit individuals from seeking access to health services out of fear of reprisals and secondary victimization resulting from identification as a victim of such an attack.” (para. 21).

<sup>134</sup> ECHR, *Norris v. Ireland*, No. 10581/83, Judgment October 26, 1988, para. 192.

<sup>135</sup> Constitutional Court of South Africa, Case CCT 11/98, *The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and others*, October 9, 1998, para. 23.

<sup>136</sup> For example, in 2009, the Government of Barbados stated that “at this stage [the national government] is not in a position to make an intervention to abolish those laws, just as it is not yet in a position to allow the use of condoms in prison. These two issues are interlinked and have to be addressed together in their totality. It would be necessary to decriminalize consensual sex between persons of the same sex before any decision can be taken on the issue of allowing condoms in prison.” UN, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Barbados, A/HRC/10/73, *January 9, 2009*, para. 74.

<sup>137</sup> IACHR, Press Release No. 147/12 *The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas*, December 17, 2012. The IACHR has further indicated that criminalization and its link with stigma towards men who have sex with men have led to a spread of HIV in Jamaica. IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, paras. 292, 293.

<sup>138</sup> UN, Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992 (1994), paras. 8.5 and 8.6.

<sup>139</sup> ECHR, *Dudgeon v. United Kingdom*, No. 7525/76, Judgment of October 22, 1981, para. 60; ECHR, *Norris v. Ireland*, No. 10581/83, Judgment of October 26, 1988, para. 46; ECHR, *A.D.T. v. United Kingdom*, No.

whether criminal or disciplinary — is incompatible with international human rights law, including the rights to privacy and equality before the law.<sup>140</sup> The Commission made a similar finding in a 2013 decision concerning the dismissal of a man from the army due to an alleged act of same-sex intimacy. The dismissal was based on a prohibition of same-sex intimacy that existed in the applicable military code at the time. The IACHR found that this provision in the military code was incompatible with the principle of non-discrimination based on (perceived or real) sexual orientation that is enshrined in the American Convention.<sup>141</sup> The IACHR notes that domestic courts have issued similar statements. For example, the Constitutional Court of Colombia has established that sexual orientation cannot itself be considered a basis for punishment, thus legal provisions that “punish solely and exclusively those with that status” entail clear discrimination that promotes the stigmatization of LGBT persons.<sup>142</sup> The Constitutional Court of South Africa has affirmed that such provisions have “no other purpose than to criminalize conduct which fails to conform with the moral or religious views of a section of society.”<sup>143</sup> Further, the IACHR notes similar decisions by the Constitutional Court of Ecuador<sup>144</sup> and the U.S. Supreme Court.<sup>145</sup>

## 1. “Buggery” or “sodomy” laws

61. The Inter-American Commission notes that in the Americas there is legislation criminalizing consensual same sex intimacy, as in other regions of the world.<sup>146</sup> These laws can be traced back to their origins in Spanish or British law. The IACHR notes that all countries in Latin America have decriminalized sex between consenting adults of the same sex. For example, since 1997, countries in Latin America such as Ecuador,<sup>147</sup> Chile,<sup>148</sup> Nicaragua<sup>149</sup> and Panama<sup>150</sup> have repealed

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35765/97, Judgment of July 31, 2000, paras. 37, 38; ECHR, *Modinos v. Cyprus*, No. [15070/89](#), Judgment April 22, 1993.

<sup>140</sup> IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, paras. 113- 114.

<sup>141</sup> IACHR, Report No. 81/13, Case 12,743, Merits, *Homero Flor Freire*, Ecuador, November 4, 2013, para. 114.

<sup>142</sup> Constitutional Court of Colombia, Judgment C-507, July 14, 1999, para. 5.11.

<sup>143</sup> Constitutional Court of South Africa, Case CCT 11/98, *The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others*, October 9, 1998, para. 26. b.

<sup>144</sup> Constitutional Court of Ecuador, Judgment No. 111-97-TC, November 27, 1997 declared null the first part of Article 516 of the Criminal Code, which established a penalty of between 4 and 8 years of imprisonment.

<sup>145</sup> United States Supreme Court, *Lawrence v. Texas*, 539 U.S. 558 (2003), June 26, 2003.

<sup>146</sup> For a reference of legislation criminalizing same-sex intimacy in countries around the world, see ILGA, *State-Sponsored Homophobia: a world survey of laws: criminalization, protection and recognition of same-sex love*, Lucas Paoli Itahorahy & Jingshu Zhu, 10<sup>th</sup> Edition, May 2015. See also, HRW, *This Alien Legacy: the origins of “sodomy” laws in British Colonialism*, December 2008.

<sup>147</sup> Constitutional Court of Ecuador, Judgment No. 111-97-TC, November 27, 1997 declared null the first part of article 516 of the Criminal Code, which established a penalty of between 4 and 8 years of imprisonment. International Commission of Jurists, *SOGI Casebook*.

<sup>148</sup> El Ciudadano, *“Se cumplen 10 años de la despenalización de la sodomía en Chile”* [10th anniversary of the decriminalization of sodomy in Chile], July 12, 2009. See also, UN, Human Rights Committee, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007, para. 16.

<sup>149</sup> In 2008 the Nicaraguan Congress adopted a new Criminal Code that decriminalized the crime of “sodomy.” LGBT activists praised this Code, although the women’s rights movement criticized it because it criminalized

the criminalization of anal sex, either through legislative reform, judicial decisions, or presidential orders. Nevertheless, eleven OAS Member States maintain laws criminalizing private, consensual sex between consenting adults of the same sex. These offenses are variously described as “buggery,” “crime against the order of nature” or the crime of “unnatural connexion (sic).”<sup>151</sup> These laws are, generally speaking, prohibitions against anal sex, and on a literal reading they apply equally to anal sex between men and women and to anal sex between men. In fact, in some jurisdictions these laws are used to prosecute opposite-sex rapes involving anal intercourse. However, in practice, these laws have a disproportionate impact on gay men and other men who have sex with men. Further, the IACHR has also been informed that although the majority of these laws “do not specifically address sexual acts between women, rampant homophobia puts women who do have sex with women, or women who do not conform to a more feminine gender identity, at risk.”<sup>152</sup> Finally, the Commission wishes to highlight that although these laws explicitly target same-sex activity, trans persons, and gender non-conforming persons also experience violence and discrimination, given their visibility.<sup>153</sup>

62. The legislation punishing sexual conduct between consenting adults in the Anglophone Caribbean originates in the era of colonial rule by Great Britain. In the Anglophone Caribbean, laws criminalizing same-sex intimacy vary greatly both in terms of the definition of the outlawed conduct and the penalty imposed. During the colonial era, English colonists in the Caribbean introduced laws prohibiting “buggery” and acts “against the order of nature,” but did not statutorily define these terms or offer guidance on the legal application or scope of these provisions.<sup>154</sup> Instead, they considered such details vulgar, and left a legacy of laws that often link same-sex intercourse with bestiality and that do not distinguish between consensual and non-consensual, commercial and non-commercial, or private and public acts.<sup>155</sup>

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therapeutic abortion. Blanca Morel, El Nuevo Diario, “*Nicaragua estrenará el “más moderno” código penal*,” November 14, 2007.

<sup>150</sup> “Sodomy” was criminalized in Panama until 2008, when a presidential decree was issued to modify Article 12 of a 1949 decree which established a penalty of prison from three months to a year, or a fine. See *Executive Decree No. 332, Official Gazette dated July 29, 2008*.

<sup>151</sup> [Antigua and Barbuda] Sexual Offences Act of 1995 (Act No. 9), Section 12 (Buggery); [Barbados] Sexual Offences Act, Chapter 154, Article 9 (Buggery); [Belize] Criminal Code of Belize establishes in its Chapter 101, Section 53 (carnal intercourse against the order of nature) and Section 45 (aggravated indecent assault); [Dominica] Sexual Offences Act 1998, Section 15 (Buggery), article 16 (Attempted buggery); [Grenada] Criminal Code, article 431 (“unnatural connexion”); [Guyana] Criminal Law Act, Chapter 8:01, section 353 (Attempt to commit unnatural offences), Section 354 (buggery); [Jamaica] Offences against the Person Act, Section 76 (Unnatural Crime), Section 77 (attempt); [Saint Kitts and Nevis] Offences against the Person Act, Part XII, Section 56 (Unnatural offences and Sodomy); [Saint Lucia] Criminal Code, Sub-Part C, Subsection 133 (Buggery); [Saint Vincent and the Grenadines] Criminal Code, Section 146 (buggery); and [Trinidad and Tobago] Sexual Offences Act Chapter 11:28, Section 13 (buggery).

<sup>152</sup> IACHR, *Report on the Human Rights Situation in Jamaica*, OEA/Ser.L/V/II.144 Doc. 12, August 10, 2012, para. 287.

<sup>153</sup> Regarding Jamaica, for example, see Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica*, October 2014, p. 10.

<sup>154</sup> HRW, *This Alien Legacy: the origins of “sodomy” laws in British Colonialism*, December 2008.

<sup>155</sup> HRW, *This Alien Legacy: the origins of “sodomy” laws in British Colonialism*, December 2008.

63. Since 1986 a number of countries in the Caribbean have amended the provisions in their sexual offences legislation, which deal with buggery, “unnatural crime” and similar offenses, in order to make them stricter.<sup>156</sup> A small number of countries had already made similar amendments previously.<sup>157</sup> In some instances these modifications increased the penalties for such crimes,<sup>158</sup> while in others, the crimes were more clearly defined.<sup>159</sup> The Bahamas is the only country member of the CARICOM that has decriminalized same-sex sexual activity between consenting adults in private.<sup>160</sup> In 1991, the law was amended to decriminalize this activity,<sup>161</sup> but the law as amended still contained a prohibition against same-sex sexual activity in a public space, and, until 2008, there was no corresponding prohibition for opposite-sex couples.<sup>162</sup> Additionally, with the 1991 reform, same-sex sexual activity between women was criminalized for the first time. Finally, the use of the narrowly defined term “anal sex” was replaced by the broadly defined term “sexual intercourse,”<sup>163</sup> a change which expanded the criminalization of sexual activity.<sup>164</sup> This was amended in 2008 in the following terms: “any adult who has sexual intercourse with another adult in a public place (whether male or female)” is guilty of a sexual offence. Currently, all sex in public regardless of whether between same sex or different sex couples is prohibited. The penalty was reduced from twenty years to two years.<sup>165</sup> However, there remains a discriminatory provision with respect to the different and older age of consent for same-sex activity as opposed to different-sex activity. Further, The Bahamas’ penal code justifies the use of force

<sup>156</sup> Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, St. Lucia, and Trinidad and Tobago. AIDS-Free World, *The Unnatural Connexion*, Global Rights, IGLHRC (2010), p. 21. (Citing Tracy Robinson, *The Vagaries of Justice*, in *Sexualities in Conversation*, No. 1, Caribbean sexualities, Part 1, 2008).

<sup>157</sup> For example, in Belize, a 1944 amendment eliminated the requirement of consent for the offence of “unnatural crime,” therefore rendering consent irrelevant to the commission of the crime. See Robinson, Tracy “Authorized Sex: Same-Sex Sexuality and Law in the Caribbean,” in *Sexuality, Social Exclusion and Human Rights: vulnerability in the Caribbean Context of HIV*, Barrow, de Bruin and Carr (eds), Ian Randle Publishers, 2009, at p. 12.

<sup>158</sup> For example, in Trinidad and Tobago the penalties for sex between two adults increased to ten years in the 1986 reform and to twenty-five years imprisonment in the 2000 reform. See Sexual Offences Act, 1986 Chapter 11:28 Act 27 of 1986 (amended by 20 of 1994; 31 of 2000), section 13.

<sup>159</sup> In Barbados, for example, the 1992 Sexual Offences Act separated “buggery” from “bestiality,” reducing the sentence for the crime of bestiality. In St. Lucia, a 2004 reform decriminalized anal sex between a man and a woman, and limited the crime to same-sex anal intercourse. See Robinson, Tracy “Authorized Sex: Same-Sex Sexuality and Law in the Caribbean,” in *Sexuality, Social Exclusion and Human Rights: vulnerability in the Caribbean Context of HIV*, Barrow, de Bruin and Carr (eds), Ian Randle Publishers, 2009, at pp. 13-14.

<sup>160</sup> Currently, an ‘unnatural crime’ is committed when there is sexual intercourse between an adult person with another person of the same sex who is a minor; or between adult persons of any gender or sexual orientation in a public space, regardless of consent. The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99, section 16.

<sup>161</sup> The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99.

<sup>162</sup> The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99.

<sup>163</sup> “Sexual intercourse” is defined in section 4 of the Act and includes all forms of penetration of the vagina or anus, all stimulation of the vulva or anus, and all penile-oral penetration.

<sup>164</sup> Robinson, Tracy “Authorized Sex: Same-Sex Sexuality and Law in the Caribbean,” in *Sexuality, Social Exclusion and Human Rights: vulnerability in the Caribbean Context of HIV*, Barrow, de Bruin and Carr (eds.), Ian Randle Publishers, 2009, at p. 14.

<sup>165</sup> Report of the Working Group on the Universal Periodic Review: Bahamas, A/HRC/10/70, 7 January 2009, para. 9; The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99.

against a person, even killing, in different situations of “extreme necessity,” including “forcible unnatural crime,” among other very different crimes.<sup>166</sup>

64. The Commission notes that international human rights bodies have consistently recommended that OAS Member States repeal these types of laws where they still exist.<sup>167</sup> Such bodies have also recommended that Member States revise their Constitution or adopt legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited.<sup>168</sup>
65. The IACHR also notes that a number of OAS Member States have rejected recommendations to decriminalize same-sex acts in the context of the UN Universal Periodic Review.<sup>169</sup> The IACHR notes that some of the most common arguments raised by States against the repeal of these laws are linked to religious opposition, particularly from evangelical churches,<sup>170</sup> as well as cultural and societal opposition.<sup>171</sup> Other States have indicated that this is a sensitive issue that requires consultation at the national level.<sup>172</sup>

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<sup>166</sup> The Bahamas, Section 107 (4) of the *Penal Code*.

<sup>167</sup> See e.g., [Guyana], CEDAW, *Concluding Observations*, CEDAW/C/GUY/CO/7-8, July 27, 2012, para. 23; [Jamaica], *Human Rights Committee, Concluding observations: Jamaica*, CCPR/C/JAM/CO/3, November 17, 2011, para. 8, and Committee on Economic, Social and Cultural Rights, *Concluding observations: Jamaica*, E/C.12/JAM/CO/3-4, June 10, 2013, para. 8; [Grenada] Human Rights Committee, *Concluding observations: Grenada*, CCPR/C/GRD/CO/1, August 14, 2009, para. 21; [St. Vincent and the Grenadines], Human Rights Committee, *Concluding Observations: St. Vincent and the Grenadines*, CCPR/C/VCT/CO/2, April 24, 2008, para. 8; [Barbados], *Human Rights Committee, Concluding Observations: Barbados*, CCPR/C/BRB/CO/3, May 11, 2007, para. 13.

<sup>168</sup> See e.g., [Belize], Human Rights Committee, *Concluding Observations: Belize*, CCPR/C/BLZ/CO/1, March 26, 2013 para. 13; [Guyana], CEDAW, *Concluding Observations*, CEDAW/C/GUY/CO/7-8, July 27, 2012 para. 23.

<sup>169</sup> [Barbados], Report of the Working Group on the Universal Periodic Review: Barbados, Addendum, A/HRC/10/73/Add.1, March 16, 2009; Human Rights Council, A/HRC/10/73, *recomendación 77.17* (France, Canada, Slovenia, Czech Republic, Chile, Sweden) y 77.18 (Canada); *Report of the Working Group on the Universal Periodic Review: Barbados*, A/HRC/10/73, January 9, 2009, para. 74; [Dominica], *Report of the Working Group on the Universal Periodic Review: Dominica*, A/HRC/27/9, June 26, 2014, para. 22; [Saint Kitts and Nevis], *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, A/HRC/17/12, March 15, 2011, para. 14; [Saint Vincent and the Grenadines] *Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines, Addendum*, A/HRC/18/15/Add.1, September 22, 2011, para. 23; [Antigua and Barbuda], *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/19/5, December 14, 2011, para. 35.

<sup>170</sup> A number of countries make reference to religious considerations. For example, Barbados indicated that it is “a heavily religious society and has a tremendous lobby in terms of the church, including activist evangelists, who have their own views on this issue.” [Barbados], *Report of the Working Group on the Universal Periodic Review: Barbados*, A/HRC/10/73, January 9, 2009, para. 74. Other countries like Jamaica have also made reference to religious considerations for not decriminalizing. See, inter alia, [Jamaica] *Report of the Working Group on the Universal Periodic Review: Jamaica*, A/HRC/16/14, January 4, 2011, para. 32.

<sup>171</sup> [Barbados] Human Rights Committee, *Information received from Barbados on the implementation of the concluding observations of the Human Rights Committee*, CCPR/C/BRB/CO/3/Add.1, June 2, 2009, para. 11; *Report of the Working Group on the Universal Periodic Review: Barbados*, A/HRC/23/11, March 12, 2013, para. 22; [Guyana] *Report of the Working Group on the Universal Periodic Review: Guyana*, A/HRC/15/14, June 21, 2011, para. 17; [Saint Kitts and Nevis], *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, A/HRC/17/12, March 15, 2011, para. 14; [Jamaica] *Report of the Working Group on the Universal Periodic Review: Jamaica*, A/HRC/16/14, January 4, 2011, para. 32; Permanent Mission of Jamaica to the Organization of American States, *IACHR Jamaica-Hearing Report*, March 27, 2014, p. 14; 8 IACHR, *Hearing on Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica*, 150<sup>th</sup> Regular Sessions, March 27, 2014; [Saint Vincent and the Grenadines] *Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines, Addendum*, A/HRC/18/15/Add.1, September

66. In this regard, the Inter-American Court has indicated that while it is true that certain societies might be intolerant with respect to a person's sexual orientation (or, for that matter, a person's race or nationality), States cannot use this as justification to perpetuate discriminatory treatments. On the contrary, States must confront intolerant and discriminatory expressions in order to prevent exclusion.<sup>173</sup>
67. The Commission notes however that States' viewpoints on this issue of discrimination vary widely among those countries in the region that criminalize consensual anal sex. The IACHR highlights that Dominica, for example, has acknowledged that legislation criminalizing intimacy between adult persons of the same sex is discriminatory,<sup>174</sup> yet Dominica maintains such legislation in place. With a somewhat different expression of viewpoint but the same result, Trinidad and Tobago, which maintains legislation criminalizing adult same-sex intimacy, has indicated that "the issue of discrimination based on sexual orientation" "remains a matter of concern."<sup>175</sup> St. Lucia has taken the positive step of condemning violence against persons of "different sexual orientation."<sup>176</sup> Other OAS Member States that still criminalize consensual same-sex intimacy between adults have indicated that they have either attempted to adopt<sup>177</sup> or have been successful in adopting measures to protect the rights of LGBT persons.<sup>178</sup>
68. Some OAS Member States have noted the weight of cultural and societal attitudes towards LGBT persons. For example, Grenada has affirmed that "with the passage of time, growing tolerance on the part of the people would help in addressing this issue."<sup>179</sup> Trinidad and Tobago has acknowledged that "effecting change [in]

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22, 2011, para. 23. See also, IACHR, Press Release No. 79/13, *IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons*, October 24, 2013.

<sup>172</sup> [Suriname] *Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Suriname*, Note PVOAS/728/13/NB/CE dated December 13 2013, received by IACHR Executive Secretariat on December 16, 2013, p. 2; [Saint Vincent and the Grenadines] Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines, Addendum, A/HRC/18/15/Add.1, September 22, 2011, para. 16.

<sup>173</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 119.

<sup>174</sup> See for example, [Dominica] Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/13/12, January 4, 2010, para. 33.

<sup>175</sup> Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago, Addendum, A/HRC/19/7/Add.1, December 14, 2010, para. 24.

<sup>176</sup> Report of the Working Group on the Universal Periodic Review: Saint Lucia, Addendum, A/HRC/17/6/Add.1, June 1, 2011, p. 7.

<sup>177</sup> Guyana indicated that its attempt to "include the phrase 'sexual orientation' in the anti-discrimination clause of the Constitution had been met with widespread consternation and protest." *Report of the Working Group on the Universal Periodic Review: Guyana*, A/HRC/15/14, June 21, 2010, para. 17.

<sup>178</sup> Belize mentioned that despite resistance from churches, especially evangelical churches, it was working on the implementation of a plan for gender policy, which included providing sexual and reproductive health services for men who have sex with men. Belize's Prime Minister had affirmed his commitment to the policy. *Report of the Working Group on the Universal Periodic Review: Belize*, A/HRC/25/13, December 11, 2013, para. 96.

<sup>179</sup> [Grenada] *Report of the Working Group on the Universal Periodic Review: Grenada*, A/HRC/15/12, June 16, 2010, para. 26. See, related [Trinidad and Tobago] Report of the Human Rights Council on its nineteenth

personal attitudes and community values [is] no easy task.”<sup>180</sup> The State of St. Lucia has indicated that there is a “need for advocacy and changes in attitude of certain sectors of society;” and that the question is, according to the State, whether such “advocacy” needs to come from the government or from those who believe they are victims of discrimination.<sup>181</sup>

69. Some Commonwealth Member States have indicated that although discriminatory laws remain in force, there is no discrimination against LGBT persons in practice.<sup>182</sup> St. Kitts and Nevis even indicated that, despite the existence of discriminatory legislation, there was a “culture of tolerance” in society at large with respect to LGBT persons.<sup>183</sup> Further, some States have indicated that they have not received complaints involving harassment or attacks against lesbians or gay men.<sup>184</sup>

## 2. “Serious Indecency” and “Gross Indecency” Laws

70. There are a number of OAS Member States that have laws against acts of “gross indecency” or “serious indecency” that apply to or have a disproportionate impact on gay, lesbian and bisexual persons.<sup>185</sup> As with the prohibitions against “buggery” and acts “against the order of nature,” laws against indecency vary in specificity and scope, and in many cases they discriminate against LGBT persons, whether by their intent or through their impact. Some countries outlaw “gross indecency” using colonial-era statutes that do not define it, though historically this crime applied to sexual conduct between males.<sup>186</sup> Usage of “gross indecency” versus

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session, Trinidad and Tobago, A/HRC/DEC/19/105, March 15, 2012, para. 478 (“the very thinking of the population needed to be changed in order to address these issues adequately”).

<sup>180</sup> Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago, Addendum, A/HRC/19/7/Add.1, December 14, 2011, para. 9.

<sup>181</sup> Report of the Working Group on the Universal Periodic Review: Saint Lucia, A/HRC/17/6, 11 March 2011, para. 65.

<sup>182</sup> [Antigua and Barbuda]: Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda, A/HRC/19/5, 14 December 2011, para. 35. [Grenada] Report of the Working Group on the Universal Periodic Review: Grenada, A/HRC/15/12, 16 June 2010, para. 26. [Jamaica] Report of the Working Group on the Universal Periodic Review: Jamaica, A/HRC/16/14, 4 January 2011, para. 31; [Saint Kitts and Nevis], Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, 15 March 2011, para. 35; [Saint Lucia] Report of the Working Group on the Universal Periodic Review: Saint Lucia, A/HRC/17/6, 11 March 2011, para. 65; [Saint Vincent and the Grenadines] Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines, Addendum, A/HRC/18/15/Add.1, 22 September 2011, para. 23.

<sup>183</sup> Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, 15 March 2011, para. 35.

<sup>184</sup> [Guyana] Report of the Working Group on the Universal Periodic Review: Guyana, A/HRC/15/14, 21 June 2010, para. 17; [Saint Kitts and Nevis], Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, 15 March 2011, para. 35.

<sup>185</sup> The following countries outlaw either gross indecency or serious indecency: Antigua and Barbuda; Barbados; Dominica; Guyana; Jamaica; Saint Lucia; Saint Vincent and the Grenadines; and Trinidad and Tobago.

<sup>186</sup> “Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanour and liable to imprisonment for two years.” Guyana, Criminal law (Offences) Act, 1893 Chapter 8:01, section 352. The term “gross indecency” is not defined in the legislation.

“serious indecency” is not consistent throughout the region, with the definition of the former in some countries resembling the definition of the latter in other countries.<sup>187</sup> There is also vagueness as to what, in the eyes of the court, constitutes “gross” or “serious” indecency.<sup>188</sup> In one example, “serious indecency” refers to “an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.”<sup>189</sup> In many cases, the offence of “gross indecency,” a crime that applied to sexual activity between men, has been replaced with the crime of “serious indecency,” and no gender is specified. Since such laws in general create exceptions for consensual sex between males and females, the effect of the law is to extend criminalization beyond sex between males, to sex between females. Serious indecency in this scenario is neutral in terms as it applies both to same and different sex couples. This means that for the first time, sex between women is criminalized. Countries such as Trinidad and Tobago then created an exception for different sex couples, making gay, lesbian and bisexual persons the primary subject of the modern law.<sup>190</sup> In some cases, countries have replaced “gross indecency” with “serious indecency” and have substantially increased the penalty.<sup>191</sup>

### 3. Legislation criminalizing non-normative gender identities and expressions

71. In addition to legislation in various countries in the region that criminalizes consensual same sex intimacy, Guyana has legislation criminalizing cross-dressing, or dressing with the clothes socially attributed to another gender.<sup>192</sup> This provision reinforces gender stereotypes and constitutes discrimination on the grounds of gender identity and expression. According to information received by

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Similar wording can be found in Jamaica, The Offences against the Person Act, 1894, Section 79. See also St. Vincent and The Grenadines, Criminal Code 1990, section 148.

<sup>187</sup> The 1998 Sexual Offences Act of Dominica (section 14) and the 2005 Criminal Code (section 132) of St. Lucia define “gross indecency,” in the same way that other countries define “serious indecency” – see infra.

<sup>188</sup> These countries include Guyana, Jamaica, and St. Vincent and the Grenadines.

<sup>189</sup> Antigua and Barbuda, The Sexual Offences Act, 1995 No. 9, section 15. Trinidad and Tobago, Sexual Offences Act, 1986 Chapter 11:28 Act 27 of 1986 (Amended by 20 of 1994; 31 of 2000), section 16. Barbados, Sexual Offences Act, 2002 Chapter 154, section 12.

<sup>190</sup> Tambiah, Yasmin, “Creating (Im) moral Citizens: Gender, Sexuality and Lawmaking in Trinidad and Tobago, 1986.” Caribbean Review of Gender Studies, The University of West Indies Centre for Gender and Development Studies, 2009.

<sup>191</sup> Tracy Robinson explains that “prior to 1986 in Trinidad and Tobago, the offence of gross indecency by a male with another male had a maximum sentence of two years. After 1986 it was replaced by the crime of serious indecency defined as an act other than sexual intercourse by a person involving the use of the genital organs to arouse or gratify sexual desire” and the punishment for “serious indecency for consenting adults increased to five years.” Further, “like Trinidad and Tobago, the 1992 Barbados Act replaced the misdemeanor of gross indecency, which was committed by a male in relation to another male and gave rise to imprisonment of up to two years, with the new one of serious indecency.” Robinson, Tracy, “A legal analysis of sex work in the Anglophone Caribbean,” paper prepared for the United Nations Development Fund for Women (UNIFEM), April 2007.

<sup>192</sup> Under section 153 part (1) (xxvii) Chapter 8:02 Summary Jurisdiction Offences, an offense is committed when “a man, in any public way or public place, for any improper purpose, appears in female attire, or being a woman, in any public way or public place, for any improper purpose, appears in male attire.”

the Commission, police have arbitrarily applied this law in order to “further discrimination” against trans persons.<sup>193</sup>

72. The Commission has received information that between February 6 and 7, 2009, seven persons were detained and charged under this offence in Georgetown, Guyana. They were reportedly not allowed to make a phone call or contact a lawyer, were mocked by police officers, and were not informed of the charges against them. On February 9, 2009, they were convicted and fined.<sup>194</sup> The convictions were appealed and the Constitutional Court decided the case on September 6, 2013, finding that cross-dressing in public is not a crime unless it is done for an “improper purpose.”<sup>195</sup> This interpretation of the provision by the Constitutional Court has been criticized, because of the ambiguity inherent in determining what would constitute a “proper” versus “improper” purpose for cross-dressing. The applicants indicated that this provision was unenforceable for reason of vagueness and uncertainty in the word “improper use” and the words “female attire” and “male attire.”<sup>196</sup> The Constitutional Court in this case held that the fact that statutory terms are free standing does not *per se* render them vague or uncertain, incapable of factual determination by a court. The appellants were seeking a finding that the statute violated human rights provisions in the Constitution, particularly the right to non-discrimination based on gender (because of the impact on the life of trans persons), and freedom of expression. To this, the Court stated that the provision did not discriminate against persons on the basis of their gender, “but rather treats both male and female persons in the same manner.”<sup>197</sup> As one of the applicants stated: “the law really stifles us, because what could be an improper purpose? The trans community is very worried, and still fearful of arrests, in light of this decision.”<sup>198</sup>

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<sup>193</sup> IACHR, Hearing on *Discrimination on the basis of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008. Audio and video not available.

<sup>194</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by IACHR Executive Secretariat on November 25, 2013.

<sup>195</sup> In this case, the Court held “it is instructive to note that it is not a criminal offence for a male to wear female attire and for a female to wear male attire in a public way or place (...) It is only if such act is done for an improper purpose that criminal liability attaches. Therefore, it is not criminally offensive for a person to wear the attire of the opposite sex as a matter of preference or to give expression to or to reflect his or her sexual orientation. It is the improper purpose for such conduct to which criminality is directed.” High Court of The Supreme Court of Judicare, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of November 6, 2013, p. 26.

<sup>196</sup> High Court of The Supreme Court of Judicare, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of 6 November 2013, p. 24.

<sup>197</sup> High Court of The Supreme Court of Judicare, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of 6 November 2013, p. 28.

<sup>198</sup> Quincy McEwan (Director of Guyana Trans United - GTU), “Constitutional Court Rules Cross-Dressing is Not a Crime if Not for “Improper Purpose” - Rights Groups Plan Appeal on Dubious Decision,” February 27, 2013.

## 4. Impact of these Laws on Violence

73. Some OAS Member States have indicated that although laws against same-sex intimacy between consenting adults in private remain on the books, they have not been enforced in recent times in relation to consensual sex between adult men.<sup>199</sup> While the Commission acknowledges the lack of recent enforcement in general, the IACHR has received reports on enforcements in Grenada.<sup>200</sup> Civil society organizations have claimed that even when laws against same-sex acts are largely unenforced, “research in other national contexts has shown that ...unenforced laws can have pervasive effects in the society.”<sup>201</sup> A recent study carried out by UNAIDS in the Caribbean region, found that nearly 23% of respondents experienced verbal insults or name-calling within one month, while 33% had been stared at or intimidated within the last month because people knew or presumed they were attracted to men.<sup>202</sup> Moreover, about one in ten (11%) reported being physically assaulted in the last five years.<sup>203</sup>
74. The UN High Commissioner on Human Rights has noted that, in general, such laws are used “to harass and prosecute individuals because of their actual or perceived sexuality or gender identity.”<sup>204</sup> The IACHR has noted that this type of legislation “contribute[s] to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence” against LGBT persons.<sup>205</sup> These laws reinforce “already existing societal prejudices” and severely increase “the negative effects of such prejudices on [the] lives” of LGBT persons.<sup>206</sup> The

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<sup>199</sup> [Antigua and Barbuda] Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda, A/HRC/19/5, December 14, 2011, para. 35; [Saint Kitts and Nevis], Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, March 15, 2011, para. 14; [Dominica] Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/27/9, June 26, 2014, para. 22; [Trinidad and Tobago] Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago, Addendum, A/HRC/19/7/Add.1, December 14, 2011, para. 71; [Barbados] Report of the Working Group on the Universal Periodic Review: Barbados, A/HRC/23/11, March 12, 2013, para. 21.

<sup>200</sup> The Advocate, “[Man arrested for Gay Sex in Grenada](#),” May 26, 2011. See also information presented by the organizations Groundation Grenada and GrenCHAP, during the public hearing “*Reports of Criminalization of Same-Sex Relations in Grenada*,” IACHR, 156<sup>th</sup> Period of Sessions, October 19, 2015. Video and audio available at: [www.iachr.org](http://www.iachr.org). See also, the testimony given by Colin Robinson (from the organization CAISO, Trinidad and Tobago) before the IACHR during the hearing “*Improper Use of Criminal Law to Criminalize Human Rights Defenders*” 153<sup>rd</sup> Period of Sessions, October 31, 2014. Videos and audio available at [www.iachr.org](http://www.iachr.org).

<sup>201</sup> Carrico, Christopher “Collateral Damage: The Impact of Laws Affecting LGBT Persons in Guyana,” The University of The West Indies Cave Hill Campus Faculty of Law, March 2012, p. 3.

<sup>202</sup> United Nations Programme on HIV/AIDS (UNAIDS), CARIMIS, “The Caribbean Men’s Internet Survey,” 2014, p. 50. In addition to men from non-independent territories in the Caribbean, men from the following OAS Member States participated in the study: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

<sup>203</sup> United Nations Programme on HIV/AIDS (UNAIDS), CARIMIS, “The Caribbean Men’s Internet Survey,” 2014, p. 50.

<sup>204</sup> OHCHR, [Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity](#), A/HRC/19/41, 17 November 2011, para. 40.

<sup>205</sup> IACHR, [Report on the Situation of Human Rights in Jamaica](#), OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, para. 271.

<sup>206</sup> Constitutional Court of South Africa, Case CCT 11/98, *The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and others*, October 9, 1998, para. 23.

criminalization of sexual intercourse between men also has a symbolic effect since in the eyes of the legal system where such criminalization is in force, “all gay men are criminals.”<sup>207</sup>

75. For example, the existence of “buggery” laws is used as a mechanism for “social control and domination” that enables states to legitimize and contribute to the stigma of LGBT persons as “immoral” individuals.<sup>208</sup> Moreover, such laws have been used to justify the arbitrary arrests, detention and even torture of LGBT people.<sup>209</sup> In its 2014 Report on Jamaica, Human Rights Watch indicated that

[p]rosecutions under these laws are rarely pursued. Nevertheless the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.<sup>210</sup>

76. The IACHR has already indicated that, as a consequence of exclusion from the protection of the justice system, those who are vulnerable remain in dangerous situations.<sup>211</sup> For instance, LGBT persons are far more likely to stay in abusive relationships without seeking police protection. They feel that they cannot come forward to report domestic violence that is occurring in their relationships, because the relationships themselves are considered criminal.<sup>212</sup>
77. The IACHR has expressed its concern about a link between conduct that is punished by the State, on the one hand, and violence against LGBT persons committed by non-state actors, on the other. In 2010, the IACHR expressed its deep concern about the situation of systematic discrimination and violence against LGBT persons in the Caribbean region.<sup>213</sup> In this regard, the Commission has indicated that the criminalization of same-sex consensual intimacy legitimizes and reinforces prejudices against lesbian, gay, bisexual and trans persons, or those

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<sup>207</sup> Constitutional Court of South Africa, Case CCT 11/98, *The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and others*, October 9, 1998, para. 28.

<sup>208</sup> IACHR, Hearing on *Punitive Measures and Discrimination on the Basis of Sexual Identity in Caribbean Countries*, 140<sup>th</sup> Period of Sessions, October 26, 2010. Audio available at: [www.iachr.org](http://www.iachr.org).

<sup>209</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by IACHR Executive Secretariat on November 25, 2013.

<sup>210</sup> Human Rights Watch, “*Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica*,” October 2014, p. 10.

<sup>211</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, para. 282.

<sup>212</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, para. 282.

<sup>213</sup> IACHR, “*Annual Report of IACHR 2010*, OEA/Ser.L/V/II. Doc.5, rev. 1,” 7 March 2011, Chapter 1 (Introduction), para. 11. Further, in October 2010, the Commission held a hearing during which it heard extensive information on the status of the law and its consequences. IACHR, Hearing on *Punitive Measures and Discrimination on the Basis of Sexual Identity in Caribbean Countries*, 140<sup>th</sup> Period of Sessions, October 26, 2010. Audio available at: [www.iachr.org](http://www.iachr.org).

perceived as such, while sending “a social message to communities and societies that discrimination and violence is condoned or tolerated.”<sup>214</sup>

78. The IACHR has also received information regarding the impact of criminalization on access to justice.<sup>215</sup> In countries where same sex intimacy between consenting adults in private is criminalized, LGBT persons are reluctant to denounce human rights violations and other abuses that may or may not be related to their sexual orientation and gender identity. Even in countries where same-sex intimacy has been decriminalized, these obstacles persist over time.<sup>216</sup> Further, many cases of harassment and violence are not reported to local authorities and there is a general lack of official data collection on this issue by States. As a result, this violence becomes invisible, which in turn furthers violence against LGBT persons. These obstacles and others regarding access to justice will be examined in more detail in chapter 6 of this Report.
79. The Commission was informed that in States that criminalize same-sex intimacy or non-normative gender identities, many victims do not report crimes out of fear of prosecution.<sup>217</sup> The Commission has indicated that these laws provide “a social sanction for abuse.” Since LGBT persons are “believed to be engaged in criminal activity, it is logical to infer that police are less likely to investigate crimes against them.”<sup>218</sup> According to the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.”<sup>219</sup> In January 2015, the U.N. Secretary-General Ban Ki Moon reaffirmed that he “staunchly oppose the criminalization of homosexuality,” because these laws “breed intolerance.”<sup>220</sup>
80. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that decriminalizing “matters of sexual orientation” would greatly contribute to overcome the social stigmatization of LGBT persons, thereby curbing impunity for human rights violations against them.<sup>221</sup> Former UN Special

<sup>214</sup> IACHR, Press Release No. 79/13, *IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons*, October 24, 2013.

<sup>215</sup> IACHR, Press Release No. 131A/14, *Report of the 153<sup>rd</sup> Session*, December 29, 2014.

<sup>216</sup> For example, the Nicaraguan Council for Human Rights (*Procuraduría para la defensa de los Derechos Humanos*) informed the IACHR that the fact that sexual relations between same-sex consenting adults were decriminalized only recently keeps many LGBT persons from reporting the violence they suffer. Response to the IACHR Questionnaire on Violence against LGTBI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on 20 November 2013, p. 8.

<sup>217</sup> IACHR, Press Release No. 79/13, *IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons*, October 24, 2013.

<sup>218</sup> IACHR, *Report on the Human Rights Situation in Jamaica*, OEA/Ser.L/V/II.144 Doc. 12, August 10, 2012, para. 271.

<sup>219</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, A/HRC/14/20, April 27, 2010, para. 20.

<sup>220</sup> Washington Blade (Michael K. Lavers), “Ban Ki-moon: Anti-sodomy laws ‘breed intolerance,’” January 13, 2015.

<sup>221</sup> UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2000/3, 25 January 2000, para. 116.

Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health declared that criminalization may not be the sole reason behind stigma, but that it perpetuates it, through the reinforcement of existing prejudices and stereotypes.<sup>222</sup>

81. The Commission has expressed that while criminalization of sexual orientation is discriminatory for anyone, it can involve a more severe violation of rights in the case of children and adolescents because of the particularly harmful psychological effects it has on children and young persons whose identity and orientation is still in the process of maturing and who are, as a result, extremely vulnerable.<sup>223</sup> More specifically, the IACHR has found that “[i]n some States of the region, children face the juvenile justice system for engaging in certain sexual behavior, especially having sexual relations with members of the same sex. Then, too, in some States children become special targets of police brutality and violence by detention facility personnel because of their sexual orientation and gender identity.”<sup>224</sup>
82. The IACHR notes that legislation criminalizing same-sex intimacy between consenting adults has also been used by some courts in the Caribbean to justify instances of violence against persons based on the perception of their sexual orientation, which will be discussed in more detail in chapter six of this Report. In defense against a charge of assault or murder, accused persons have invoked, and courts have accepted, justifications such as self-defense or provocation due to “a state of violent temporary insanity” following a non-violent same-sex sexual advance.
83. Another aspect to take into account is that minor offenses can be used to harass LGBT or non-gender-conforming persons and draw them into the criminal justice system, thereby criminalizing LGBT persons and subjecting them to more violence. Once such persons are incarcerated or in the justice system, this situation can in turn give rise to further incidents of discrimination and violence. A study found that the law against cross-dressing is more frequently invoked than the buggery law, and people are sometimes prosecuted and convicted of this offense. Five trans persons who were interviewed for that study in April-May 2011 indicated that each of them had been charged with a crime at some point, and all but one had been charged with the crime of cross-dressing. Of the five, those whose charges had come to trial plead guilty and received fines. In another example, a 17-year old Indo-Guyanese trans woman sex worker was reportedly arrested and held for three months before she was informed of the charges against her. During that time she was reported to have been “beaten with rope, dragged through the drains, [and] taken to clean the station yard.”<sup>225</sup>

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<sup>222</sup> UN, Human Rights Council, [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, April 27, 2010](#), para. 22.

<sup>223</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011 para. 121 (hereinafter “IACHR, *Juvenile Justice and Human Rights in the Americas*, 2011”).

<sup>224</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, 2011, para. 121.

<sup>225</sup> Carrico, Christopher “Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana,” Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16.

84. The Commission takes the view that the historical discrimination against LGBT persons compels States to be particularly vigilant to adopt measures to ensure the interruption of cycles of violence, exclusion and stigma. States must protect lesbian, gay, bisexual, and trans persons from violence exerted against them, in view of the principle of non-discrimination. States have an obligation to adopt measures to protect against and respond to the forms of violence directed against LGBT persons, as a direct consequence of the principle of non-discrimination.
85. Finally, the Inter-American Commission is of the opinion that laws that criminalize same-sex intimacy between consenting persons of the same sex in private are incompatible with the principles of equality and non-discrimination according to international human rights law. Thus, and taking into account their impact on violence against LGBT persons, the IACHR urges the States of the region that have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws, and legislation criminalizing cross-dressing, to repeal those laws, and, in the meantime, to impose an explicit and formal moratorium on enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten or extort LGBT persons or those perceived as such.

## ***B. Legislation to protect “public morals” and its impact on violence***

86. The IACHR has received reports on the impact of other legislation, which while not directly criminalizing same-sex activity or trans persons, is generally construed and applied to criminalize LGBT persons. Examples include legislation against vagrancy and loitering, laws seeking to protect “public morals,” or “proper conduct,” and laws that criminalize conduct regarded as “indecent,” “lewd,” “provocative” or “affronts against public morals and good manners.” These laws exacerbate police abuse, extortion, ill treatment, and acts of violence against LGBT persons in various countries in the region. To use one example, vagrancy laws provide law enforcement with authority that is broad and poorly defined and that can be used to discriminate against trans persons, arbitrarily regulating the use of public spaces, and judge persons based on their physical appearance.<sup>226</sup>
87. The UN Human Rights Committee has expressed concern regarding certain legal provisions, such as misdemeanour codes (*ordenanzas contravencionales*) which are “used to discriminate against people on account of their sexual orientation.”<sup>227</sup>

<sup>226</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated 29 November 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 20. See also, CEJIL and Hivos, *Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*, San José. Costa Rica: CEJIL, 2013. [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua], (available only in Spanish).

<sup>227</sup> Human Rights Committee, Concluding Observations to the third, fourth and fifth periodic reports of El Salvador, CCPR/CO/78/SLV, August 22, 2003, para. 16.

The UN Committee against Torture has stated, speaking in regard to LGBT persons, that the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuses against them.<sup>228</sup> Some of these provisions are explicit in national criminal legislation, but they can also be found in local and/or provincial laws, and in police regulations.<sup>229</sup>

88. These laws are criticized for, among other things, their vague language. Vague definitions of outlawed conduct open the door to arbitrary application and enforcement with respect to persons who are seen as defying socially established gender norms, particularly trans persons. There is evidence that law enforcement authorities have repeatedly used such laws to harass and persecute LGBT persons, especially trans sex workers.<sup>230</sup> In some jurisdictions, police officers and law enforcement agents have ample powers to limit or restrict the circulation of persons in public spaces. This power, coupled with discrimination and social prejudice toward LGBT persons, leads to abuse of police discretion in the application of laws relating to the use of public spaces. Moreover, the Commission is concerned over reports received from civil society groups in different countries regarding police forces that are specifically targeting lesbian, bisexual and trans women under the rubric of “public morals” (*buenas costumbres*).<sup>231</sup>
89. The IACHR has indicated that a section of the 2001 Law on Police and Social Harmony of Honduras (*Ley de Policía y de la Convivencia Social*) produces in practice situations where human rights are violated, particularly those of trans persons.<sup>232</sup> The Commission echoes concerns voiced by civil society organizations indicating that this law facilitates police abuse and arbitrary detentions of trans persons “regardless of whether they perform sex work or not.”<sup>233</sup> According to civil society organizations, this law in Honduras is constantly used to arbitrarily detain many persons in unofficial detention centers, especially sex workers,

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<sup>228</sup> Committee Against Torture, Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention Conclusions And Recommendations Of The Committee Against Torture, Costa Rica, Cat/C/Cri/Co/2, 7 July 2008, para. 11.

<sup>229</sup> [Argentina] e.g. Ley 219-1951, Province of Jujuy, “against moral and good manners” and Provincia de Salta, Ley Provincial N°7.135, Article 114, “prostitution;” [Chile], Penal Code, Article 373, “good manners,” “scandal;” [El Salvador] Ordenanza para la Convivencia Ciudadana del Municipio de San Salvador, Article 32, “moral and good manners;” [Ecuador] Guayaquil, Ordenanza Reglamentaria de la zona de regeneración urbana, Article 4.4, “public order” and “good manners;” [Guatemala] Penal Code, Article 489, “good manners;” [Honduras] (“Ley de Policía y de la Convivencia Social,” decreto 226-2001); [Mexico] Penal Code of Jalisco State, “Article 135, “acts against public morals, “obscene exhibitions;” among others.

<sup>230</sup> [Argentina] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note OEA-592 dated December 12, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 11; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas Centro de Apoyo a las Identidades Trans, received by IACHR Executive Secretariat on December 20, 2013, p. 8.

<sup>231</sup> See for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the Organización de Transexuales por la Dignidad de la Diversidad, Chile, received by IACHR Executive Secretariat on 25 November 2013. See also, BBC Mundo, “[Derechos gays: paradoja colombiana](#),” September 4, 2008.

<sup>232</sup> IACHR, *Annual Report 2013*, [Chapter IV: Honduras](#), para. 427.

<sup>233</sup> IACHR, *Annual Report 2013*, [Chapter IV: Honduras](#), para. 427, making reference to HRW, “[Not worth a penny: Human Rights abuses against transgender people in Honduras](#),” May 2009.

without any judicial control, and with highly subjective interpretations about the vague concepts of “social coexistence” or “moral.”<sup>234</sup>

90. Further, these police laws stipulate that someone who is “wandering in a suspicious way” can be brought in to the police station for identification purposes in the name of “society’s protection.”<sup>235</sup> The State of Honduras has acknowledged that in addition to criminalizing poverty, this legislation also discriminates on the basis of physical appearance, contributes to illegal detention, and disrespects basic human rights.<sup>236</sup>
91. The State of Argentina has acknowledged that in some provinces, the police are using particular statutes (*Código de Faltas* and *Código Contravencional*) to penalize, harass and persecute LGBT persons.<sup>237</sup> According to the Argentinean State, individual freedom should not be denied by this legislation, and these codes are “a tool for social and cultural control which violates constitutional principles and human rights.”<sup>238</sup> Argentina is in the process of repealing these statutes in most provinces, and other countries like Venezuela have struck down these laws on constitutionality grounds,<sup>239</sup> or, like Chile, have accepted recommendations by international bodies to review them.<sup>240</sup>
92. The IACHR has received reports by civil society that the terms used in these laws are so vague that their application is mainly based on the prejudices, and subjective and personal views held by the authorities charged with their enforcement. Such laws could therefore be used to target public displays of

<sup>234</sup> IACHR, *Hearing on Hate Crimes against LGBTI Persons in Central America*, 140<sup>th</sup> Period of Sessions, October 26, 2010, (audio - 00:17:15). See also, CEJIL and Hivos, *Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*, San José. Costa Rica: CEJIL, 2013. Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua (available only in Spanish).

<sup>235</sup> Honduras, Law on Police and Social Harmony of Honduras (*Ley de Policía y de la Convivencia Social*), Article 100.

<sup>236</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6.

<sup>237</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12. The State of Argentina noted, however, that these codes had been or were in the process of being repealed in most provinces.

<sup>238</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12.

<sup>239</sup> In 1997 the Supreme Court of Venezuela declared the unconstitutionality of its 1939 Law on Vagrants and Crooks (“Ley de Vagos y Maleantes”). Reportedly, this law was used to commit abuses against LGBT persons and trans women who were sex workers. Quiteria Franco, “*Sobre la ley de vagos y maleantes y las personas LGBTI en Venezuela*,” 6 May 2014 (in Spanish only).

<sup>240</sup> The Government of Chile accepted the recommendation, made in the context of the Universal Periodic Review process, to review Article 373 of the Criminal Code (referring to crimes against decency or morality) to ensure that article 373 is not used to criminalize LGBT persons. The government stressed that a new draft of the Penal Code would soon be presented to Congress, which would involve the derogation of Article 373 of the Code. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Chile, A/HRC/26/5, 2 April 2014, para. 105. See Movilh, “*Por un Chile Diverso*” Campaign, “*Artículos 365 y 373 del Código Penal*,” (No date; in Spanish only).

- affection between couples of the same sex.<sup>241</sup> Further, civil society organizations indicate that some local governments consider LGBT persons to be “persons of bad habits” and that these local governments promote the “eradication of homosexuals” as part of their citizen security policies.<sup>242</sup> During a 2011 hearing, the IACHR learned about the case of three men who “were arrested and spent the night in jail, and were released without charge the next morning. They were ostensibly arrested for ‘disturbing the peace’ and for being ‘suspicious,’ but in this case, their ‘suspicious’ behavior amounted to wearing tight clothing and being effeminate.”<sup>243</sup>
93. Trans women are particularly affected by these laws. Civil society has pointed out that “the mere presence of a [trans person] in public may be interpreted as an ‘obscene exhibition’ by police.”<sup>244</sup> Allegedly, trans women are treated like criminals and suffer psychological, physical and sexual harassment.<sup>245</sup> There are also reports of cases in which, following an arrest under laws protecting “social coexistence and order,” law enforcement authorities have extorted, blackmailed or demanded sexual favors from trans persons so as to avoid being incarcerated or released from jail.<sup>246</sup>
94. The IACHR has also received information that laws against soliciting, vagrancy, loitering and cross-dressing have been used to target trans women who are sex workers, disproportionately relative to other sex workers, and in ways that lead to more violence. Solicitation has generally been defined as “the act of inviting another to engage in an act of prostitution” and is criminalized in most Commonwealth Caribbean States.<sup>247</sup> Old vagrancy laws still remain on the books as part of particular statutes in some countries. These statutes usually deal with “small charges,<sup>248</sup> summary jurisdiction,<sup>249</sup> [and] minor offences,” in other words,

<sup>241</sup> Article 373 of the Chilean Criminal Code. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by MOVILH, Chile, received by IACHR Executive Secretariat on November 20, 2013, pp. 9-10.

<sup>242</sup> Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX) and Red Peruana TLGB, *Informe Anual Sobre Derechos Humanos De Personas Trans, Lesbianas, Gays Y Bisexuales en el Perú 2012: Sin Igualdad No Hay Justicia*, 2012, Peru, p. 57 (in Spanish only).

<sup>243</sup> IACHR, Hearing on *Human Rights, Sexual Orientation, and Gender Identity in Haiti*, 141<sup>st</sup> Period of Sessions, March 25, 2011. Audio and video available at: [www.iachr.org](http://www.iachr.org).

<sup>244</sup> Global Rights International; Gay and Lesbian Human Rights Commission (IGLHRC); International Human Rights Clinic, Human Rights Program, Harvard Law School; and Colectivo Binni Laanu A.C., *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico A Shadow Report*, Submitted to the Human Rights Committee, March 2010, p. 12.

<sup>245</sup> IACHR, Hearing on *Hate crimes against members of the LGBT Community and Impunity in Central America*, 140<sup>th</sup> Period of Sessions, October 26, 2010. Audio available at: [www.iachr.org](http://www.iachr.org).

<sup>246</sup> The Commission received information about the attacks suffered by LGBT people in police stations in Honduras. IACHR, Public Hearing on *Complaints of Arbitrary Detentions and Torture in Detention Centers in Honduras*, October 23, 2008. Audio available at: [www.iachr.org](http://www.iachr.org). See David Brown, “Los Crímenes de Odio contra las personas LGTB en Honduras Periodo 2005 – 2009,” Tegucigalpa, Honduras, 2009, p. 10. Human Rights Watch, “Not worth a penny: Human Rights abuses against transgender people in Honduras,” May 2009, p. 10.

<sup>247</sup> Robinson, Tracy. “*A legal analysis of sex work in the Anglophone Caribbean*,” Submission prepared for the United Nations Development Fund for Women (UNIFEM), April 2007.

<sup>248</sup> [Antigua and Barbuda] Small Charges Act 1892, Chapter 405, ss 19, 41; [Dominica] Small Charges Act 1891, Cap 10:39, s 39; [St. Kitts and Nevis] Small Charges Act 1892, Chapter p. 75, ss 18, 29, 39, 43.

the types of statutes that typically grant wide discretion to local law enforcement and judicial authorities, although in some cases, these offenses “have been placed in penal and criminal codes.”<sup>250</sup> Trans women who are sex workers are constantly targeted,<sup>251</sup> and are susceptible to violence.<sup>252</sup> The Commission has received information that many trans sex workers are arbitrarily arrested based on their gender identity and/or expression.<sup>253</sup> Organizations claim that trans sex workers face much more discrimination and illegal arrests than cisgender sex workers.<sup>254</sup> One 17-year old trans youth, who reports being a sex worker, described being arrested and held “for three months before being told what crime she was being charged with.”<sup>255</sup> Finally, one study indicates that the average age of trans women in sex work is 22,7 years old; their youth exacerbates their vulnerability to violence.<sup>256</sup>

95. The IACHR recommends that OAS Member States repeal legal provisions that penalize public conduct on vaguely defined grounds to protect “public morals,” and other similar legislation and norms, which have a disproportionate impact against LGBT persons, criminalizing and stigmatizing them.

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<sup>249</sup> [Belize] Summary Jurisdiction Offences Act 1953, Chapter 98, ss 15 – 18; [Guyana] Summary Jurisdiction Offences Act 1894, Chapter 8:02, ss 155 – 156.

<sup>250</sup> Robinson, Tracy. “A legal analysis of sex work in the Anglophone Caribbean,” Submission prepared for the United Nations Development Fund for Women (UNIFEM), April 2007.

<sup>251</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Fundación Silueta X, Ecuador, received by IACHR Executive Secretariat on 27 November 2013, p. 3.

<sup>252</sup> Human Rights Observatory for Vulnerable Groups, Trans Siempre Amigas (TRANSSA), and Comunidad de Trans y Travestis Trabajadoras Sexuales (COTRAVETD), Discrimination and Violence towards Transgender women in the Dominican Republic, 27 October 2014, p. 3.

<sup>253</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6. Information also received during the visit to Colombia of IACHR Rapporteur on the Rights of LGBTI Persons. October 2014. See also, public hearing before the IACHR “*Human Rights Situation of Trans Persons in Panama*,” October 19, 2015. Video available at [www.iachr.org](http://www.iachr.org).

<sup>254</sup> IACHR, Hearing on Hate crimes against LGBTI persons in Central America, 140<sup>th</sup> Period of Sessions, 26 October 2010, (reference to Nicaragua, in Spanish only, audio at 00:17:15). Audio available at: [www.iachr.org](http://www.iachr.org).

<sup>255</sup> Carrico, Christopher. “Collateral Damage: The Impact of Laws Affecting LGBT Persons in Guyana,” The University of The West Indies Cave Hill Campus Faculty of Law, March 2012, p. 16.

<sup>256</sup> Human Rights Observatory for Vulnerable Groups, Trans Siempre Amigas (TRANSSA), and Comunidad de Trans y Travestis Trabajadoras Sexuales (COTRAVETD), Discrimination and violence towards Transgender women in the Dominican Republic, 27 October 2014, p. 2.

CHAPTER 4  
FORMS AND CONTEXTS OF  
VIOLENCE AGAINST LGBTI  
PERSONS



# FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS

## A. Introduction

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

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

### 1. Underreporting and lack of official data

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

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

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

98. In many OAS member States, victims, family members, and friends of victims are frequently deterred from reporting the killings of their lesbian, gay, bisexual or trans relatives or friends, due to the high levels of prejudice and hostility against non-normative sexual orientations and gender identities held by authorities and other members of their communities. Oftentimes when the crime is reported, the information regarding the sexual orientation or gender identity of the victim is either concealed or overlooked. The IACHR has indicated that underreporting of cases of violence against LGBT persons is particularly apparent in cases of non-lethal attacks, since few of these are reported to authorities, monitored by non-governmental organizations, or covered by the media.<sup>258</sup> One organization in Mexico has estimated that the available data may reflect only one third of the crimes actually committed in that country.<sup>259</sup>
99. The data collection mechanisms in OAS countries are very limited.<sup>260</sup> The IACHR recently conducted a fifteen-month monitoring project concerning LGBT-related killings and acts of violence. In carrying out this project, the IACHR found that official statistics were insufficient, and it had to rely on other sources of information such as media coverage, reports from civil society organizations, and other monitoring sources.<sup>261</sup> This monitoring effort produced a Registry of Violence that, although not exhaustive, revealed pervasive violence against LGBT persons throughout the region.<sup>262</sup>
100. Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.”<sup>263</sup> Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender

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

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

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

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

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

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

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

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

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

## 2. Pervasiveness of violence

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

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

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

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

violence was not officially reported and was not covered in the media.<sup>267</sup> The IACHR is of the view that violence based on prejudice, in the terms defined in chapter two of this Report, is prevalent in all countries in the Americas.

### 3. Invisibility of everyday violence

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

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

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

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

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

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

105. Further, the IACHR has found that violence against bisexual persons is the most difficult to track. During the fifteen-month period monitored (between January 2013 and March 2014), the IACHR was informed of three acts of violence against bisexual men, or those perceived as such. The IACHR notes the difficulty in documenting violence specifically targeting bisexual persons. Unless a source specifically indicates that someone is being targeted because of his or her bisexuality, violence against bisexual persons is often exerted because such persons are perceived as either gay or lesbian, or because such persons are witnessed expressing same-sex affection. This tendency in the data to categorize bisexual persons and bisexual expressions of affection as gay or lesbian, regardless of the true motivation, renders violence based on prejudice towards bisexuality invisible for data collection purposes.<sup>273</sup> Notwithstanding, a study carried out in the United States suggests that bisexual persons “experience higher rates of sexual and intimate partner violence than gay, lesbian, and straight people.”<sup>274</sup>
106. Regarding intersex persons, the IACHR notes that during the fifteen-month period (between January 2013 and March 2014) included within the Registry of Violence referred to above, there was no data or reports recording instances of violence against intersex persons. The Commission also indicated that this lack of data is due to a variety of reasons, including the fact that these so-called “normalizing” surgeries conducted on intersex persons is generally carried out according to State-approved medical protocols, and is not reported in the media or denounced by victims, families or organizations. The IACHR also noted that intersex persons and their families often experience deep feelings of shame and fear; this

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

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

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

<sup>272</sup> Lá Página, “Comunidad LGBTI pide investigar detención de transgénero agente del CAM,” June 29, 2015.

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

<sup>274</sup> Movement Advancement Project-BiNetUSA- Bisexual Resource Center, *Understanding issues facing bisexual Americans*, September 2014.

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

## 5. High levels of cruelty

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

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

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

<sup>277</sup> Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical “Normalization” of Intersex People*, April 28, 2005, p. 19.

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

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

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

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

noted by the IACHR,<sup>282</sup> the UN High Commissioner for Human Rights,<sup>283</sup> and civil society organizations.<sup>284</sup>

108. In the Registry of Violence, referred-to above, there are numerous examples of killings that are particularly heinous, including cases of stoning, decapitation, burning, or impalement. Many victims are repeatedly stabbed or beaten to death with hammers or blunt objects. Others are punched or kicked to death, have acid thrown at them, or are suffocated. Some victims in the Registry were repeatedly run over by cars, mutilated or set afire. In many cases, victims were killed after being subject to gruesome acts of torture, inhumane or degrading treatment, and multiple forms of extreme humiliation, debasement, torture and/or rape.<sup>285</sup>
109. In the last few years, several cases of brutal killings against LGBT persons were brought to the attention of the IACHR. For example, in 2009, the body of Jorge Lopez Mercado was found decapitated, partially burned and with his four limbs severed from his torso in Puerto Rico.<sup>286</sup> In March 2012, Daniel Zamudio, a 24-year-old man, was brutally attacked and sadistically tortured for several hours by a group of four men at a park in Santiago, Chile. Although Daniel Zamudio was found still alive and was immediately hospitalized, the severity of the wounds inflicted lead to his death a few days later.<sup>287</sup> The IACHR issued a press release strongly

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

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

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

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

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

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

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

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

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

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

<sup>289</sup> Ahora Noticias, “*Caso Zamudio: Patricio Ahumada es sentenciado a presidio perpetuo*,” October 28, 2013 (Available only in Spanish).

<sup>290</sup> La Nación, “*Joven lesbiana habría sido atacada por presuntos neonazis en Valdivia*,” March 29, 2012 (Available only in Spanish).

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

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

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

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

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

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

<sup>295</sup> See e.g. [Mexico], Milenio, “Retiran a pareja gay de centro comercial,” March 27, 2015.

<sup>296</sup> Pragmatismo Politico, “Gays são espancados por 15 homens no metrô de São Paulo” November 14, 2014 (Available only in Portuguese).

<sup>297</sup> SDP Noticias, “Fanáticos gays del Atlético de Madrid sufren ataque homofóbico en México,” May 27, 2014 (Available only in Spanish).

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

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

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

## C. Violations of the Right to Life

### 1. Extrajudicial Executions

113. For the purpose of this Report, *extrajudicial executions*<sup>301</sup> are understood as deprivations of the right to life unlawfully perpetrated by State agents. The inter-American case law has already established that extrajudicial executions are, by definition, contrary to Article 4(1) of the American Convention,<sup>302</sup> and that the deprivation of life by the authorities of the State is a matter of the utmost gravity.<sup>303</sup> Although there is underreporting and lack of information regarding extrajudicial executions of LGBT persons at the hands of state officials, the IACHR is very concerned about reports received of extrajudicial executions of LGBT persons that are perpetrated by State agents. According to one regional organization, which obtained its information from witness testimony, police officers have been directly involved in a “good number” of killings of trans women. The motives included retribution against those who had reported an officer’s wrongdoing, and the result of arguments with the police over “sexual favors or money.”<sup>304</sup>
114. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that lesbian, gay, bisexual and trans persons are “especially vulnerable” to extrajudicial killings.<sup>305</sup> For example, it is reported that four military police officers, after having humiliated two trans sex workers in Salvador, Brazil, in August 1998, forced them to jump into the sea, where one of them drowned.<sup>306</sup> The IACHR also received information about the 2006 killing in Guatemala of Paulina Méndez Cartagena, a trans woman who was allegedly killed by four police

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

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

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

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

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

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

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

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

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

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

<sup>307</sup> HRW, “*Guatemala: Transgender People Face Deadly Attacks: Victims concerned that police may have been responsible for these crimes*,” February 21, 2006.

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

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

<sup>310</sup> Amnesty International, Report: The State of the World’s Human Rights, 2011, Chapter on Honduras.

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

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

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

## 2. Killings

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

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

<sup>313</sup> Portal Catolé News, “*Soldado PM mata adolescente em Patu, e comete suicídio em seguida*,” April 7, 2013. (Available only in Spanish).

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

<sup>315</sup> Animal Político, “*CDHDF confirma 7 asesinatos cometidos por policías capitalinos*,” May 2, 2013. (Available only in Spanish).

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

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

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

120. Some civil society organizations and State agencies in some countries in the Americas have registered an increase in the number of killings in recent years. However, it is not possible to categorically conclude whether in fact there has been an increase in killings, or, because of a more rigorous monitoring, there is greater visibility and documentation of the killings of LGBT persons. In this section, the IACHR summarizes some data on killings by different sources in several countries in the region, while signaling countries in which there seems to be an increase in the number of killings. For example, in 2014, the Mexican Executive Commission for Attention to Victims [*Comisión Ejecutiva de Atención a Víctimas*] (CEAV) —a federal autonomous governmental agency— expressed its concern with regard to the rising number and increasingly violent nature of crimes based on prejudice against LGBT persons.<sup>321</sup> According to the Mexican civil society organization *Letra S Sida, Cultura y Vida Cotidiana A.C.*, there have been 1,218 killings motivated by prejudice against LGBT persons. According to this report, more than 80% of victims had received several types of attacks before being killed.<sup>322</sup> Other organizations in Mexico documented at least 164 killings of trans women between 2007 and 2012, confirming a steady increase in the numbers in these years.<sup>323</sup>
121. In 2013 an organization in Chile reported an increase in the number of killings of LGBT persons with respect to previous years,<sup>324</sup> amounting to a total of 24 since 2002.<sup>325</sup> Organizations from Guatemala report that killings of LGBT persons are not found in police records, and when exceptionally they are, they end in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- month in Argentina.<sup>337</sup> In Uruguay, according to information provided by civil society organizations, the Ministry of Interior had reported that five trans women were killed in 2012,<sup>338</sup> four of which were killed in the span of three months.<sup>339</sup>
123. The State of Colombia informed the IACHR that between 2011 and 2013, at least 219 killings of LGBT persons had been registered nationwide.<sup>340</sup> A civil society organization reported that between 2010 and 2011 at least 280 LGBT persons were killed.<sup>341</sup> The UN Office of the High Commissioner for Human Rights indicated that 2013 had seen an increase in the number of reported killings of LGBT persons in Colombia in comparison to those reported in 2012.<sup>342</sup> The Commission has also received information on the differential impact of the armed conflict in Colombia on LGBTI persons. The Colombian organization Caribe Afirmativo has documented 114 violent deaths of LGBT persons in the Caribbean Region of Colombia, 58 of which occurred in territories where the armed conflict persists. The victims were primarily gay men and trans women.<sup>343</sup> Worrisome information has been brought to the attention of the Commission from other regions in Colombia. In Cauca, it was reported that a gay man had his penis cut off and he was left to bleed to death.<sup>344</sup>
124. Further, the IACHR has received troubling information about the number of killings of LGBT persons taking place in Brazil. Reported figures from Brazil far surpass the number of killings reported in any other OAS Member State. It bears mentioning in this regard that, although high levels of violence and prejudice against persons with non normative sexual orientations and gender identities may exist in Brazil, several other factors may also contribute to these figures being so disproportionately high. First, Brazil is the second most populated OAS Member State after the United States of America, with more than 200 million inhabitants. Second, Brazilian civil society, and the State itself during the last few years, have built up robust reporting mechanisms through which cases are identified and recorded. In quantitative terms, the State of Brazil informed the IACHR that there were 278 killings of LGBT persons in 2011 and 310 reported cases in 2012, a year-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>352</sup> Globo.com, “Homem é morto a pedradas em uma rua do bairro Mumbuca em Maricá, RJ,” May 16, 2013 (available only in Portuguese).

<sup>353</sup> Folha PE, “Travesti assassinado na praia de Piedade,” January 24, 2013 (available only in Portuguese).

<sup>354</sup> Terra Noticias, “RS: travesti é morto com sete facadas no centro de Gravataí,” March 6, 2013 (available only in Portuguese).

<sup>355</sup> DOL Br, “Travesti é executada no bairro da Guanabara,” January 8, 2014 (available only in Portuguese).

<sup>356</sup> Gazeta do Povo, “Travesti é morta a tiros no Boqueirão,” July 2013 (available only in Portuguese).

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

## ***D. Violations of the Right to Personal Integrity***

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

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

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

<sup>358</sup> New York Times, “[Gay Man Beaten and Left for Dead; 2 Are Charged](#),” October 10, 1998. For more information, see Matthew Shepard Foundation: Embracing Diversity, <http://www.matthewshepard.org/>.

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

<sup>360</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013*, 2014, p. 92; Vocativ, “[Death by Grindr: Is It the New Killer App?](#),” May, 2014.

<sup>361</sup> Colombia Diversa, [Activista LGBT fue brutalmente asesinado en Bogotá](#), 18 de noviembre de 2014; Sentiido, *La Muerte de Guillermo Garzón, más allá de un “crimen pasional”*, November 20, 2014 (available only in Spanish).

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

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

128. The IACHR has held that the lawful activity of security forces, directed toward the protection of the population, is fundamental for achieving the common good in democratic society. Human rights require that States prevent and respond to the arbitrary exercise of authority and constitute an essential safeguard of the security of the public. Respect for, and correct interpretation and application of, the guarantees established in the American Convention and American Declaration must serve as a guide to member states to ensure that the activities of their security forces respect human rights.<sup>364</sup>
129. Regarding the prevention by the State of acts of torture and ill-treatment against LGBTI persons, the IACHR has highlighted that legislation and regulations concerning the police must set out “clearly that no law enforcement officer can inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment,” and that every law enforcement agent must immediately report any case of torture or cruel, inhuman or degrading treatment of which he or she has knowledge.<sup>365</sup>
130. In the last few years, the IACHR has continuously received information on acts of violence against LGBT persons that are perpetrated by law enforcement agents,<sup>366</sup> including acts of torture, degrading or inhumane treatment, excessive use of force, arbitrary detention, and other forms of abuse.<sup>367</sup> Numerous cases of State-led

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

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

<sup>365</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 129.

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

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

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

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

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

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

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- Executive Secretariat November 24, 2013; [Peru] Defensoría del Pueblo, *La discriminación en el Perú: Problemática, normatividad y tareas pendientes*, Serie Documentos Defensoriales – Documento N° 2, Septiembre 2007, p. 109; Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2008*, 2009, pp. 85-90; Instituto de Desarrollo y Estudios de Género “RUNA,” *Informe de derechos humanos sobre la población trans (transexuales, travestis, transgénero) en la ciudad de Lima (Informe 2008)*, January 2009, p. 4; [United States] Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, October 2012, p. 19; [Venezuela] Acción Ciudadana contra el SIDA (ACCSI), *Informe sobre Homofobia, Violencia e Impunidad contra la Población Lesbiana, Gay, Bisexual, Transexual y Bisexual en la República Bolivariana de Venezuela*, 2008, p. 3; [Regional] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, pp. 13-18; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TVT), *Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans*, 2012, p. 49.
- 369 [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Ecuador, Note 4-2-380/2013 dated December 2 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 3; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 8; Comisión Nacional de los Derechos Humanos (CNDH), *Informe especial de la comisión nacional de los derechos humanos sobre violaciones a los derechos humanos y delitos cometidos por homofobia*, 2010, p. 10; [Nicaragua] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 2-4; Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional*, March 2012, pp. 7, 22, 23, 26-30; [Venezuela] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20, 2013, received by IACHR Executive Secretariat on December 26, 2013, p. 3; IACHR, Hearing on *Citizen Security, Prisons, Sexual Diversity, and Equality in Venezuela*, 140<sup>th</sup> Period of Session, October 29, 2010.
- 370 [Peru] Committee against Torture, *Concluding observations: Peru*, CAT/C/PER/CO/5-6, 21 January 2013, para. 22; [Costa Rica] Committee on the Elimination of Discrimination against Women, *Concluding Observations: Costa Rica*, CEDAW/C/RI/CO/5-6, 29 July 2011, para. 40.
- 371 [Honduras] UN, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1, 13 December 2012, para. 90; [Colombia] UN, Human Rights Council, *Report of the Working Group on Arbitrary Detention. Addendum: Mission to Colombia*, A/HRC/10/21/Add.3, February 16, 2009, para. 56.
- 372 [Colombia] UN High Commissioner for Human Rights, *Report on the situation of human rights in Colombia: Annex*, A/HRC/16/22, February 3, 2011, para. 9; United Nations High Commissioner for Human Rights, *Report on the Situation of Human Rights in Colombia, Annex IV: Situation of Especially Vulnerable Groups*, E/CN.4/2006/009, January 20, 2006, para. 27.
- 373 IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012.

131. The Commission has previously expressed concern about cases of police abuse against LGBT persons,<sup>374</sup> and has indicated that police involvement in discrimination and violence against LGBT persons leads others to believe that they can harm persons of non-normative sexual orientations and gender identities with impunity.<sup>375</sup> The IACHR notes that police and other State security agents – legally entitled to enforce public order – share the same attitudes and prejudices against LGBT persons that are prevalent in society at large. Arbitrary detention is another significant concern in the overall context of police abuse against LGBT persons. As indicated in the previous chapter, the IACHR found that police officers arbitrarily deprive LGBT persons of their liberty on the grounds of alleged “public scandal,” or because their sole presence is considered a threat to “public morals”. Numerous reports indicate that trans women and trans sex workers are particularly vulnerable to police abuse and are regularly subjected to inhumane treatment by law enforcement when detained.<sup>376</sup> Many trans Latin American women in Queens, New York, have experienced being stopped and searched by the police on suspicion of prostitution while walking in their own neighborhoods. As was affirmed by a trans woman: “to the police, all transgenders are prostitutes.”<sup>377</sup>
132. According to information received by the Commission, the violence occurs at all stages of police custody, including apprehension, transportation in police vehicles and, above all, in the premises of police stations and lock-up facilities. Among the most commonly reported forms of abuse are: extortion and the demand for sexual favors; the use of excessive force; vicious beatings; the use of firearms to hurt or incapacitate victims; instances in which trans women are forced to strip fully naked in public; and constant hostility and acts of humiliation such as forcible removal of wigs, misgendering,<sup>378</sup> and constant verbal abuse. As noted by the UN Office of the High Commissioner for Human Rights, “States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”<sup>379</sup>
133. According to information received, police agents have arrested LGBT persons based solely on their appearance, the way they are dressed, or their gender expression. For example, it is reported that in 2011 in Belize, two police officers arrived at a bar. One of the police officers asked two trans women: “why are you dressing like that if you are men?” The officers proceeded to arrest the women and, when asked for a reason, the officers answered: “because you look suspicious, you confuse me.” In transit, the two trans women were subjected to mistreatment. The

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

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

<sup>376</sup> See below, section of this Report on LGBT persons deprived of liberty.

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

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

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

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

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

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

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

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

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

<sup>383</sup> Agenda LGBT A.C., *Informe de la situación de homofobia en México del año 2013*, February 2013 (updated in June 2013); La Jornada, “*Joven fue detenido, vejado, golpeado y robado por policías ‘por andar de puta’*,” March 27, 2013 (available only in Spanish).

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

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

136. Police abuse is also reported to take place in or around places where LGBT persons socialize or its surroundings. For instance, a violent police raid is reported to have taken place at an LGBT beauty pageant in Monterrey, Mexico, in February 2013. Agents of the federal police force —under the command of an official of the Federal Public Ministry— stormed the night club where the contest was taking place, ordered everyone out, and arrested at least 70 people who were present at the event, who were fined, without criminal charges. According to the information presented to the Commission, police agents insulted them using homophobic and transphobic slurs: “faggots, we are taking you because dressing up as women is immoral.”<sup>386</sup> The IACHR has also received reports of police cracking down on clubs and hangouts of LGBT persons in other countries.<sup>387</sup>
137. In Argentina, an official study conducted in 2012 showed that 83% of surveyed trans women had been victims of serious acts of violence and discrimination perpetrated by police officers.<sup>388</sup> Another study prepared by civil society organizations two years following the passing of the gender identity law indicated that trans women feel safer in public spaces, and police abuses against trans persons had diminished.<sup>389</sup> However, other reports indicate that grave instances of police abuse against LGBT persons, particularly trans women, are still frequent in various Argentinean provinces.<sup>390</sup>
138. The IACHR has received reports from multiple organizations of cases in which police agents not only perpetrate violence, but also incite others to attack LGBT persons, or are indifferent toward violence perpetrated against LGBT persons by third parties. Reportedly, police officers were involved in the attack of a gay man in Jamaica which ultimately led to a mob killing. The incident began with the police officers beating the victim with batons, after which they urged others to beat him. The victim was dismembered, stabbed and stoned to death.<sup>391</sup>

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386 victim, Acento YouTube Channel [https://www.youtube.com/watch?v=NKaB4XrHk\\_w#t=23](https://www.youtube.com/watch?v=NKaB4XrHk_w#t=23); Le Monde, “*Les Caraïbes touchées par une vague d’homophobie*,” August 23, 2013 (available only in French).

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

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

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

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

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

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

139. A trans woman in Honduras explained that when a drunk and aggressive client stabbed her in the arms, neck, and leg in September 2011, she sought help from the police. She recalls: “the police didn’t ask me to make a statement, they laughed at me and asked me for sexual services even after I had told them that I was injured and needed help. They told me that I got what I deserved for being out in the street.”<sup>392</sup>
140. When Argentinean human rights defender and activist Diana Sacayán was insulted and attacked at a bar in 2013, she sought the assistance of two gendarmerie agents who were nearby. Allegedly, the agents spoke to her attacker, allowed him to leave and went back to her saying, “you’d better start running.” They then hit her with a baton. When she arrived at the local police station to file a report, it is alleged that the chief officer on duty refused to take her report and had her taken to a nearby hospital. She suffered a fractured nose and cheekbone. No record was made of her presence at the police station.<sup>393</sup> The IACHR has also received information of police indifference in cases of violence against LGBT persons in Chile.<sup>394</sup>
141. Since the coup d’état in Honduras in 2009, the Inter-American Commission<sup>395</sup> and the UN Special Rapporteur on the situation of human rights defenders<sup>396</sup> have found that LGBT persons were among the groups suffering severe violence in Honduras. In fact, the Special Rapporteur indicated that the persistence of such acts could indicate a pattern of hate crimes, primarily committed by the police and private security guards.<sup>397</sup> In its latest visit to Honduras, the IACHR received more reports on arbitrary detention and acts of violence perpetrated by police agents against LGBT persons.<sup>398</sup> Civil society alleges that mistreatment of trans women regularly takes place in public view and with no consequences for the perpetrators.<sup>399</sup> For instance, in July 2014, a video emerged of a trans woman sex worker being attacked by a man, while others watched, in the city of San Pedro Sula, Honduras.<sup>400</sup> According to the victim, the perpetrator was a doctor who had

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

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

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

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

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

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

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

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

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

hired her for sex but refused to pay. The video reportedly shows how law enforcement officers not only fail to intervene or provide any assistance to the victim, but how they also take part in the beating.<sup>401</sup> Similarly, a transgender activist in El Progreso, Honduras, recounted: “[in] 2012, three policemen forced me into a patrol car telling me they were going to take me to the station, but they took me to an isolated place and kicked me and punched me in the stomach for over 15 minutes. They left me lying there and threatened to kill me if I talked.”<sup>402</sup>

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

<sup>401</sup> El Heraldo, “*Brutal golpiza a ‘gay’ en Honduras*,” August 6, 2014 (available only in Spanish).

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

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

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

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

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

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

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

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

143. In 2011, activists from the Mexican state of Durango demonstrated before the local council, denouncing at least 70 instances of rape and sexual abuse committed by the local police against gay and trans sex workers, all of which had ended in impunity.<sup>410</sup> A survey carried out by civil society in the Dominican Republic found that 36% of trans women who were engaged in sex work reported having to agree to “sexual favors” demanded by police agents to avoid arrest.<sup>411</sup> Civil society organizations also report instances of police abuse, extortion, and arbitrary detention targeting afro-descendant trans women in Brazil.<sup>412</sup> In November 2014 the IACHR declared admissible a petition against the State of Peru in which Luis Alberto Rojas Marín, a young gay man, was allegedly arrested by police agents and, as alleged, suffered severe physical violence while in detention, including torture. Petitioners allege that three police officers raped the alleged victim with a rubber baton, in a context in which he was sexually harassed and insulted because of his sexual orientation.<sup>413</sup>
144. Finally, the Inter-American Commission has received information indicating that local governments in the Peruvian districts of Lima Metropolitana, Pueblo Libre,<sup>414</sup> Jesús María, San Isidro, and Comas, have enforced policies aimed at the “eradication” of gay persons.<sup>415</sup> In 2012, civil society organizations reported the

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

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

<sup>410</sup> La Voz de Durango, “*Denuncia comunidad Gay 70 casos de abusos sexuales por parte de policías*,” February 18, 2011 (available only in Spanish).

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

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

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

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

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

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

- **Persons Deprived of Liberty**

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

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2012 (available only in Spanish); Audio recordings of telephone consultations with security officers: [https://www.youtube.com/watch?v=hFTpcy\\_k3ls](https://www.youtube.com/watch?v=hFTpcy_k3ls).

416 Lamula.pe, “*Política de ‘erradicación’ de homosexuales se practica en varios municipios de Lima*,” July 11, 2012 (available only in Spanish); Audio recordings of telephone consultations with security officers: [https://www.youtube.com/watch?v=hFTpcy\\_k3ls](https://www.youtube.com/watch?v=hFTpcy_k3ls) (available only in Spanish).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147. Discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance.<sup>433</sup> According to the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, persons deprived of liberty shall not be discriminated against for reasons of sex, gender, sexual orientation, or any social condition.<sup>434</sup> According to the Yogyakarta Principles, “everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity.”<sup>435</sup>
148. According to the information received by the IACHR, LGBT persons who are deprived of their liberty are at a heightened risk for sexual violence – including a higher risk for multiple sexual assaults – and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty.<sup>436</sup> The Special Rapporteur on violence against women, its causes and consequences has expressed concern about lesbian women being placed in cells with men as punishment for the women refusing the sexual advances of prison staff. Allegedly, female prisoners whom guards viewed as “masculine” in appearance have reportedly been subjected to harassment, physical abuse, and “forced feminization.”<sup>437</sup> Additionally, gay men or trans women deprived of their liberty may be forced into servitude by other inmates, required to do menial tasks on their behalf, and provide “sexual services” to them.<sup>438</sup> Police agents have reportedly incited others to sexually abuse LGBT persons who are detained, even handing out condoms to facilitate the abuse.<sup>439</sup> Further, there are reports of prison guards having LGBT prisoners beaten up or allowing other prisoners to rape them, and of prison staff placing LGBT prisoners in cells with known sexual predators. There are also reports of prison staff

<sup>433</sup> IACHR, Press Release No 97/14 “*Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*,” September 15, 2014.

<sup>434</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the IACHR by Resolution 1/08 at its 131<sup>st</sup> Regular Period of Sessions, held March 3-14, 2008.

<sup>435</sup> *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2006. Principle 9.

<sup>436</sup> IACHR, Press Release 53/15 “*IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*,” May 21, 2015. “Sexual assaults, including instances of gang rape in detention of lesbian, homosexual, bisexual and transgender activists, were also reported in Ecuador, Honduras, [and] Mexico.” United Nations, Human Rights Council *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/16/44, December 20, 2010, para. 87. Committee against Torture, Costa Rica, CAT/C/CRI/CO/2, July 7, 2008, para. 18. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 23; *Report of the Special Rapporteur on the independence of judges and lawyers*, A/66/289, August 10, 2011, para. 81.

<sup>437</sup> UN, Human Rights Council, *Pathways to, Conditions and Consequences of Incarceration of Women*, A/68/340, August 21, 2013, paras. 58, 59 and 63, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 36.

<sup>438</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 105.

<sup>439</sup> [Guyana] Carrico, Christopher, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional*, March 2012, p. 23.

running prostitution rings, in which all trans prisoners are forced to participate as sex workers.<sup>440</sup> Several NGOs report that LGBT persons often decide to remain in their cells as much as possible in order to avoid being attacked by other inmates.<sup>441</sup>

149. According to the Bureau of Justice Statistics of the United States Department of Justice, LGBT inmates in US detention facilities are among those with the highest rates of sexual victimization.<sup>442</sup> Among LGBT prisoners, 12.2% reported being sexually victimized by another inmate and 5.4% reported being victimized by staff.<sup>443</sup> In México, for instance, local organizations allege that at least 60% of LGBT persons deprived of their liberty have been subject to different kinds of abuse.<sup>444</sup> In Colombia, a case that was decided by the Constitutional Court is illustrative of the extent to which a gay man may be subjected to repeated sexual abuse.<sup>445</sup> In Guatemala, organizations report that a young gay man was sexually assaulted by 17 men,<sup>446</sup> and a trans woman was allegedly raped more than 80 times while in detention.<sup>447</sup>
150. The Subcommittee on the Prevention of Torture indicated that one trans person deprived of liberty in Paraguay had been raped by a group of inmates after having been forced to walk around in a short skirt. Allegedly, trans persons deprived of liberty at the National Penitentiary of Tacumbú were routinely asked to perform sexual scenes in the common areas of the prison, watched by other inmates and paid for by guards. A trans person was allegedly killed in 2008 after a guard inserted a police baton into her anus.<sup>448</sup> In the September 2014 visit to Paraguay

<sup>440</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 106.

<sup>441</sup> [Mexico] *Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (México)*, received by the IACHR Executive Secretariat on November 1, 2013, p. 9; [Peru] *Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by El Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX (Perú)*, received by the IACHR Executive Secretariat on December 20, 2013, p. 1.

<sup>442</sup> US Department of Justice - Bureau of Justice Statistics, *PREA Data Collection Activities 2013*, June 2013, NCJ 242114, p. 2.

<sup>443</sup> US Department of Justice - Bureau of Justice Statistics, *PREA Data Collection Activities 2013*, June 2013, NCJ 242114, p. 2.

<sup>444</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (Mexico), received by the IACHR Executive Secretariat on November 1, 2013, p. 9.

<sup>445</sup> Colombian Constitutional Tribunal, *Decision T-1096/04*, case of Mauricio Gutiérrez, November 4, 2004; see also, Colombia Diversa, *Situación de los derechos humanos de lesbianas, gays, bisexuales y transgeneristas en Colombia*, 2005, p. 35.

<sup>446</sup> Fundación Myrna Mack et. al, *Discriminación por orientación sexual e identidad de género y una aproximación a la interseccionalidad con otras formas de discriminación en Guatemala*, November 4, 2012, p. 37. The IACHR has also received information regarding degrading treatment and sexual violence by authorities against gay detainees. IACHR, *Fifth Report on the Situation of Human Rights In Guatemala*, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, chapter 8, para. 45.

<sup>447</sup> UN, Human Rights Council, *Pathways to, Conditions and Consequences of Incarceration of Women*, A/68/340, August 21, 2013, paras. 58, 59 and 63, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 36.

<sup>448</sup> UN, Subcommittee on Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay CAT/OP/PRY/1*, adopted on June 7, 2010, para. 241. 214. See also, UN, Special Rapporteur on torture and

by the IACHR's Rapporteur on Persons Deprived of Liberty he noted that trans persons were subject to different forms of violence and discrimination ranging from physical and verbal assaults to multiple instances of rape.<sup>449</sup> During a March 2015 public hearing, the government of Paraguay informed the IACHR that it had adopted measures to guarantee improved conditions of detention for trans persons in the National Penitentiary of Tacumbú.<sup>450</sup>

151. In 2014 and 2015, the Commission received troubling information regarding instances of rape and sexual violence against trans persons deprived of liberty in the United States, in prisons and immigration detention facilities.<sup>451</sup> In July 2014, the IACHR was informed that Marichuy, a trans woman detained at the Eloy Detention Center in Arizona, had been raped after having been subjected to previous instances of abuse and threats of rape.<sup>452</sup> According to a 2013 Report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sixteen gay and trans persons in the United States were subjected to solitary confinement, torture and ill treatment, including sexual assault, while in detention in immigration facilities.<sup>453</sup>
152. In January 2015, it was reported that Leslieann Manning, a trans woman, sued the New York maximum security facility where she was being held, alleging that prison staff were deliberately indifferent to her heightened risk for the sexual assault which she suffered.<sup>454</sup> In the case of Ashley Diamond, a trans afro-descendant woman deprived of liberty in Georgia, United States, the Commission requested information from the government in April 2014,<sup>455</sup> based on publicly available information that Diamond had been raped at least seven times since being detained in 2012, and that her access to hormone therapy had been withheld. According to a news report, she had been mocked by prison officials as a “he-she thing” and thrown into solitary confinement for “pretending to be a woman.” Allegedly, Diamond has undergone drastic physical changes after being denied access to hormones and, in desperation, has tried to castrate herself and kill herself several times.<sup>456</sup> In an interview, Diamond said, “every day I struggle with

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other cruel, inhuman or degrading treatment or punishment. *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development; mission to Paraguay A/HRC/7/3/Add.3*. Adopted on October 1, 2007, chapter IV: *Conditions of detention*, para. 70.

<sup>449</sup> IACHR, Press Release No. 97/14, “*Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*,” September 15, 2014.

<sup>450</sup> IACHR, *Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay*, 154<sup>th</sup> Period of Sessions, March 17, 2015. See also, IACHR, Press Release No. 37A/15, “*Report on the 154th Session of the IACHR*,” June 19, 2015.

<sup>451</sup> The IACHR received information on further cases of violence against LGBT asylum seekers detained in the United States and Mexico, referred to in the section of this report concerning migration status.

<sup>452</sup> El Nuevo Día, “*Denuncian violación de mujer transgénero en centro de detención de inmigrantes*,” [“Rape of Trans Woman Reported in a Migration Detention Center”], July 31, 2014 (Available in Spanish only).

<sup>453</sup> A/HRC/22/53/Add.4, para. 178, cited in OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 35.

<sup>454</sup> GBTO Nation, *Transgender inmate sues N.Y. prison over sexual assault*, January 8, 2015.

<sup>455</sup> Response to IACHR, *Request for information on the basis of Article 18 of the Rules of Procedure of the IACHR*, September 27, 2015 (ref: request for information regarding Ashley Diamond). The Permanent Representative of the United States of America before the OAS, May 28, 2015, received June 3, 2015 (on file with the Executive Secretariat).

<sup>456</sup> The New York Times, *Transgender Woman Cites Attacks and Abuse in Men’s Prison*, April 5, 2015.

trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this.”<sup>457</sup> The United States government responded to the request for information indicating that the US Department of Justice had joined in the federal lawsuit that Diamond had filed against Georgia corrections officials.<sup>458</sup>

153. On November 26th 2013, Ayelén, a trans woman, was reportedly arrested by local police in the city of San Miguel de Tucumán in Argentina. She was allegedly taken to the police station where five police officers raped her. She was then taken to a cell shared with other prisoners, where she, as it is reported, was raped again by several of them. The following day she was forced to clean the police station. She managed to escape, and she went to a local hospital and filed a report. While the physical examinations were being performed at the hospital, police agents allegedly showed up and persuaded her to drop the charges. She alleges that was even forced to sign a document in which she declared that what she had previously stated was untrue.<sup>459</sup>

154. In April 2015, the IACHR was informed of the situation of violence and discrimination faced by Veronica Bolina, an afro-Brazilian trans woman deprived of liberty in São Paulo, Brazil. According to the information received, Bolina had been severely beaten, tortured, and subjected to degrading treatment at the hands of police after she bit off half the ear of a prison warden. On April 27, 2015, the IACHR sent a letter requesting information on the measures taken to investigate the attacks perpetrated against her and the measures taken to guarantee her safety, as well as information on the situation of other trans persons deprived of liberty in São Paulo.<sup>460</sup>

155. Trans women are at a heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case.<sup>461</sup> The Commission has received reports that trans women are regularly housed in male pavilions in some OAS Member States.<sup>462</sup> On the other hand,

<sup>457</sup> The New York Times, *Transgender Woman Cites Attacks and Abuse in Men’s Prison*, April 5, 2015.

<sup>458</sup> Response to IACHR, *Request for information on the basis of Article 18 of the Rules of Procedure of the IACHR*, September 27, 2015 (re: request for information regarding Ashley Diamond). The Permanent Representative of the United States of America before the OAS, May 28, 2015, received June 3, 2015 (on file with the Executive Secretariat).

<sup>459</sup> Akahatá (Equipo de Trabajo en Sexualidades y Géneros) & Heartland Alliance for Human Needs & Human Rights, *Situación de los Derechos Humanos relacionados con las personas LGBTI y los Derechos Sexuales y Derechos Reproductivos en Argentina*, January 2014, para. 4.

<sup>460</sup> Letter dated April 27, 2015, (Reference: Investigation in the case of Veronica Bolina). Filed with the IACHR Executive Secretariat.

<sup>461</sup> See e.g. Lambda Legal, “*Transgender Incarcerated People in Crisis*,” no date.

<sup>462</sup> [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Organización de Transexuales por la Dignidad de la Diversidad* (OTD), received by IACHR Executive Secretariat on November 25, 2013, p. 4; [Guatemala] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 16; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México* (Mexico), received by IACHR Executive Secretariat on December 20, 2013, p. 135.

according to the available information, various prison compounds in Argentina,<sup>463</sup> Brazil,<sup>464</sup> Colombia,<sup>465</sup> El Salvador,<sup>466</sup> Guatemala,<sup>467</sup> Honduras,<sup>468</sup> Jamaica,<sup>469</sup> Paraguay,<sup>470</sup> the United States,<sup>471</sup> and Uruguay,<sup>472</sup> have separate pavilions or cells in male prisons to specifically house trans women and gay men.

156. Although this segregation of gay men and trans women from the general inmate population is done to better ensure their safety, the IACHR is concerned about reports of inferior living conditions in these cells or units when compared to other units in the facility, and further stigmatization due to these measures of segregation.<sup>473</sup> Further, it is possible that this segregation limits their access to programs and benefits afforded to the general population, which are key to rehabilitation or participation in early release programs.<sup>474</sup> Measures taken to protect persons deprived of liberty who are LGBT should involve no greater restrictions on their rights than is experienced by the general inmate population. The United Nations Office on Drugs and Crime has recommended that the principle for classification and allocation should be to house LGBT detainees “in whichever environment will best ensure their safety.”<sup>475</sup> The violence committed against

<sup>463</sup> Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013, p. 5. Diario Uno (Mendoza), “*En el pabellón gay conviven 15 presos*,” May 5, 2009 (available only in Spanish).

<sup>464</sup> Answer to the IACHR LGBTI Rapporteurship questionnaire, submitted by the organization Gajop, Gabinete de Assessoria Jurídica às Organizações Populares, Brazil, p. 4.

<sup>465</sup> Colombia Diversa, “*Del Amor y otras condenas; personas LGBT en cárceles en Colombia*,” 2013-2014, pp. 26-27, indicating that according to data produced by the State (INPEC), 14% of prisons in Colombia have a specific pavilion or cell for LGBT persons.

<sup>466</sup> Response by the Government of El Salvador to a list of issues, *to be addressed during the sixth periodic report by El Salvador* (CCPR/C/SLV/6), CCPR/C/SLV/Q/6/Add.1, September 21, 2010, para. 56; United Nations Development Program (UNDP), “Procuraduría para la Defensa de los Derechos Humanos” (El Salvador), “*Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*,” 2013, p. 35.

<sup>467</sup> IACHR, *Fifth Report on the Situation of Human Rights In Guatemala*, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, chapter 8, para. 45.

<sup>468</sup> Verified by the IACHR delegation that visited the San Pedro Sula National Penitentiary, during the December 2014 onsite visit to Honduras. IACHR, Press Release No. 146/14, *IACHR Wraps Onsite Visit to Honduras*, December 5, 2014. The IACHR delegation was informed that gay and bisexual men and trans women were previously housed with the general male population, and that this made them more vulnerable to sexual violence. This situation had changed and they had their separate dorm, where they felt safer.

<sup>469</sup> The Jamaica Gleaner, *Gay colony in prisons*, October 8, 2006.

<sup>470</sup> IACHR, Press Release No. 97/14, *Rapporteurship on the Rights of Persons Deprived of Liberty Wraps up Visit to Paraguay*, September 15, 2014.

<sup>471</sup> Huffington Post, *New York’s Largest Jail to Open Housing Unit For Transgender Women*, November 18, 2014.

<sup>472</sup> Colectivo Ovejas Negras, “*Informe sobre Uruguay para la 18ª Ronda del Examen Periódico Universal del Consejo de Derechos Humanos de la Organización de las Naciones Unidas*,” June 2013, para. 9; *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Uruguay*, A/HRC/13/39/Add.2, December 21, 2009, para. 112.

<sup>473</sup> For example, the IACHR has also received information that sometimes LGBT persons are housed with persons living with HIV, furthering stereotyping and stigmatizing LGBT persons. Colombia Diversa, “*Del amor y otras condenas: personas LGBT en cárceles en Colombia*,” 2013-2014, p. 26.

<sup>474</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>475</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 115. In the United States, some prisons in certain states have adopted policies for trans persons deprived of liberty, which apply to housing, clothing, showering, grooming, searches, and other aspects of detention, with the result of trans women being placed in female prisons and being referred to treatment on the basis of their gender, as opposed to their sex assigned at

LGBT persons deprived of liberty, including torture and sexual abuse, is compounded by the impunity surrounding these acts. This is particularly true when state agents overseeing custody of the victims perpetrate violence against them, since the victims tend not to report these crimes out of fear of further victimization and violence.

157. During a public hearing held in October 2015, the IACHR received information about the allocation of trans women to penitentiaries depending solely on criteria related to their genitalia: “if she has a penis she will be assigned to a male detention facility, and if she has a vagina, she will be sent to a female detention facility.”<sup>476</sup> The non-governmental organization *Almas Cautivas A.C.* indicated that both in male detention facilities, and in female detention facilities, trans women are “isolated from the general population, in spaces called “annexes” or “*módulos*,” arguing that it is for their safety. There, they face physical, verbal, psychological and even sexual abuse. The threats and insults by the authorities of the detention centers (security, custody and technical staff) and by the penitentiary authorities is a constant.”<sup>477</sup> The IACHR considers that the decision on where to house trans persons must be made on a case-by-case basis,<sup>478</sup> and that OAS Member States must undertake the measures to ensure, whenever possible, that trans persons participate in the decision related to their allocation in detention centers.

158. “I was detained 18 times because I was a sex worker... they took me from the street and told me I was disrupting public order (*escándalo en la vía pública*) so they would lock me up. At the beginning I was in Sector 10, which was only for gay and trans persons, but that (disappeared)... the last time I was housed in Sector 5 with men... I was also victim of abuse, several rapes... one has to have sex the “chiefs,” to those in charge, in order to survive. These acts are not denounced out of FEAR... when I entered a prison, I was treated as a man, they would use my male name, they would insult me, they would tell me “you are a man, stop with your bad habits (*mañas*)”. Having a trans identity is very challenging, and assuming oneself as trans comes with great responsibility... some [trans women] prefer to cut their hair short because they would rather pass as gay and not as trans women, because we are victimized the most.”<sup>479</sup>

birth. These policies have led to positive results. NBC Chicago, *Jail Has New Policy for Transgender Inmates*, April 8, 2011.

<sup>476</sup> Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, *Human Rights of LGBT Persons Deprived of Liberty in Latin America*, hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156<sup>th</sup> Period of Sessions, October 23, 2015 (free translation by the IACHR).

<sup>477</sup> Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, *Human Rights of LGBT Persons Deprived of Liberty in Latin America*, hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156<sup>th</sup> Period of Sessions, October 23, 2015.

<sup>478</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>479</sup> Testimony by a trans woman who was formerly deprived of liberty in Guatemala. REDNADS, “*Primer Diagnóstico: Necesidades de las Poblaciones LGBTI Privadas de Libertad*”, June 2015, p. 65 (available in Spanish only. Free translation by the IACHR).

159. The Commission has also received troubling reports of the routine use of solitary confinement<sup>480</sup> to segregate LGBT individuals for their purported “protection”. For example, in the United States, the American Civil Liberties Union (ACLU) found that “...for prisoners and detainees who are [...] (LGBT), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population.”<sup>481</sup> The ACLU has also indicated that depression and suicidal behavior can be “made significantly worse by forced segregation and isolation.”<sup>482</sup> The IACHR has also received reports of the use of solitary confinement in immigration detention centers in the United States, such as the case of Delfino Quiroz, a gay man from Mexico who was held in solitary for four months in 2010.<sup>483</sup>
160. The Inter-American Commission reiterates that solitary confinement should only be used in exceptional circumstances, for the shortest possible period of time, and only as a measure of last resort.<sup>484</sup> It must be subject to strict judicial oversight and take place in cells that meet the minimum conditions according to international standards. Persons deprived of liberty in solitary confinement must undergo strict medical supervision. Subjecting prisoners to prolonged periods of time in solitary confinement, or in similar situations of deprivation of human contact, may produce irreversible physical and mental damage, and amount to inhuman or degrading treatment.<sup>485</sup> Sexual orientation and gender identity should not be used as criteria in subjecting persons to unduly prolonged solitary confinement.<sup>486</sup> Persons deprived of liberty must not be penalized or punished due to prejudice and discrimination based on perceived or actual sexual orientation or gender identity.<sup>487</sup> Even where the intent is to protect LGBT persons deprived of liberty from other inmates, the methods used must not subject LGBT persons deprived of liberty to harmful situations such as prolonged solitary confinement.
161. The IACHR has received information on good practices being employed in some countries in the region, such as Argentina, Brazil, Colombia, El Salvador,

<sup>480</sup> Generally, solitary confinement refers to any regime where an inmate is held in isolation from others (except guards) for at least twenty-two hours a day. UN Special Rapporteur against Torture, *Solitary confinement should be banned in most cases, UN expert says*, October 18, 2011. UN, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, August 5, 2011.

<sup>481</sup> American Civil Liberties Union, *Ending Solitary Confinement – The Dangers of Isolation for LGBTI Prisoners and Detainees*, June 27, 2012. See also, Lambda Legal, *Transgender Incarcerated People in Crisis*, Updated 2015. See, e.g., [United States] Huffington Post, *CeCe McDonald Shares The Struggles of Being A Trans Woman in A Male Prison Facility*, May 5, 2014.

<sup>482</sup> American Civil Liberties Union, *Ending Solitary Confinement – The Dangers of Isolation for LGBTI Prisoners and Detainees*, June 27, 2012. See also, Lambda Legal, *Transgender Incarcerated People in Crisis*, no date (updated 2015).

<sup>483</sup> New York Times, *Immigrants Held in Solitary Cells, Often for Weeks*, March 23, 2013.

<sup>484</sup> IACHR, Press Release No. 51/13, *IACHR Expresses concern over excessive use of solitary confinement in the United States*, July 18, 2013.

<sup>485</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>486</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>487</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

Guatemala, Honduras, Mexico, and the United States, among others. The IACHR was informed, for example, of certain measures that have been adopted by the *Procuración Penitenciaria de la Nación* of Argentina since 2008.<sup>488</sup> In Colombia, a directive issued by the penitentiary authority in 2011, and several decisions of the Constitutional Court, have helped to protect the rights of LGBT persons deprived of liberty. The subject of these include trainings and sensitization programs aimed at guards and detainees regarding sexual orientation and gender identity in places of detention.<sup>489</sup> In the United States, the Federal Prison Rape Elimination Act (PREA) requires prison authorities to make sexual abuse complaint procedures accessible to trans detainees, and to train guards on issues related to trans persons.<sup>490</sup> The IACHR has received reports of positive developments in El Salvador,<sup>491</sup> Guatemala<sup>492</sup> and Mexico,<sup>493</sup> in which governments and civil society organizations have jointly engaged in training prison guards and staff on treatment of LGBT persons deprived of liberty, and developing protocols for the handling of LGBT detainees. In Honduras, the bill that establishes the National Preventive Mechanism<sup>494</sup> states that its personnel need to verify the existence of LGBT persons as “vulnerable groups” within the population of persons deprived of liberty.<sup>495</sup> Finally, the IACHR notes that a trans person, Maria Clara de Sena, has been appointed as a member of the State Mechanism to Prevent and Combat Torture in the state of Pernambuco in Brazil. It has been reported that this appointment and the subsequent work of de Sena have further helped to protect the right to personal integrity of LGBT persons in that state.<sup>496</sup>

162. States must refrain from committing acts of torture, inhuman or degrading treatment against persons deprived of liberty, including those that are motivated by prejudices related to sexual orientation or gender identity. Further, as guarantors of the rights of persons deprived of liberty, states must protect the life and personal integrity of LGBT persons, or those perceived as such, from other persons deprived of liberty. The IACHR urges OAS Member States to adopt urgent

<sup>488</sup> Information submitted to the IACHR by the Federal Prison Supervisory Agency [*Procuración Penitenciaria de la Nación Argentina*], received by the IACHR Executive Secretariat on December 20, 2013.

<sup>489</sup> Decisions by the Colombian Constitutional Court T-062 of 2011, February 4, 2011. Directive by the INPEC No. 10 issued on July 5, 2011. See also new penitentiary legislation (Código Penitenciario and Carcelario approved in 2014 through Law 1709), in which sex, sexual orientation and gender identity are specially protected categories. Colombia Diversa, “*Del Amor y otras Condenas: personas LGBT privadas de libertad en América Latina*”, June, 2015, pp. 9-10.

<sup>490</sup> United States Department of Justice, National Institute of Corrections, “*Lesbian, Gay, Bisexual, Transgender and Intersex Offenders*” January 2015.

<sup>491</sup> Contra Punto, *LGBTI Recluidos contarán con protocolo de atención*, June 23, 2015 (Available only in Spanish).

<sup>492</sup> Ministerio de Gobernación de Guatemala, *SP Comprometido con Sensibilizar Necesidades de Reclusos LGBT*, February 19, 2015.

<sup>493</sup> The IACHR was informed that the organization *Almas Cautivas, A.C.* has provided a series of trainings in different penitentiaries in the country, effectively training more than 300 public servants on issues pertaining to trans persons and gender identity. They have also joined forces with the UNHCR to conduct trainings for immigration detention officers who work for the “Instituto Nacional de Migración” in Mexico. April and June 2015.

<sup>494</sup> National Prevention Mechanisms are national agencies, either standalone or incorporated in national human rights institutions, which are responsible for the prevention of torture. They are mandated by the Optional Protocol to the Convention against Torture, of which Honduras is a signatory.

<sup>495</sup> Association for the Prevention of Torture (APT), *LGBT Persons Deprived of Liberty*, 2013, p. 14.

<sup>496</sup> GELEDES, “*Maria Clara de Sena, transexual de PE é a 1ª do mundo a atuar no combate à tortura em prisões*”, June 6, 2015 (available in Portuguese only).

and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region's places of detention, including prisons and immigration detention centers. The IACHR urges OAS Member States to develop comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.<sup>497</sup>

163. The Commission calls on OAS Member States to restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons. The IACHR urges OAS Member States to ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not result in punishment of, deny access to benefits to, or place undue restrictions on, such LGBT persons.
164. Finally, the Inter-American Commission calls on OAS Member States to adopt measures to prevent violence against LGBT persons deprived of liberty. These measures include, among others, the following: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers.<sup>498</sup> Caution must be exercised in collecting data on the prevalence of LGBT persons and of violence based on prejudice in places of detention, given the inherent risks of further victimization, stigmatization, and abuse.<sup>499</sup> Finally, an important component of prevention is also the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons. This sends a clear message to the population deprived of liberty that violence against LGBT persons is not tolerated.

## 2. Rape and other acts of sexual violence

165. The Inter-American Court of Human Rights has defined sexual violence as any action “with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”<sup>500</sup> The Court has established that “rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. ...[R]ape must also be understood as an act of vaginal or anal penetration, without the victim's consent, through the

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<sup>497</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>498</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>499</sup> The Association for the Prevention of Torture (APT) has developed a set of guidelines for conducting preventive monitoring of the situation of LGBT persons deprived of liberty around the world. In the guidelines, the APT draws special attention to the caution that is warranted when conducting interviews of, or collecting data regarding, LGBT persons deprived of liberty. APT and Penal Reform International, “LGBTI Persons Deprived of Liberty: a framework for preventive monitoring,” 2013.

<sup>500</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 306.

use of other parts of the aggressor's body or objects, as well as oral penetration with the virile member."<sup>501</sup> Following this same line of reasoning, the IACHR, too, has observed that sexual violence takes many forms. The Court's jurisprudence regarding sexual violence creates comprehensive, multidimensional obligations for the State to prevent, investigate, prosecute, and redress this serious human rights violation.<sup>502</sup>

166. Lesbian, gay, bisexual, trans, and intersex persons can be particularly vulnerable to sexual violence. One of the reasons for this vulnerability stems from the fact that non-normative sexual orientations and gender identities challenge the traditionally accepted notions of sex, sexuality, and gender. Therefore, in societies where such challenges are confronted with violence, discrimination, and prejudice, sexual violence may acquire a particular significance when perpetrated against LGBT persons, as it can be used as a way to punish and debase victims for being who they are. The IACHR has also received information on rape and acts of sexual violence committed against intersex persons, since in the "social imaginary" these types of sexual abuses are part of a way to "cure intersex bodies."<sup>503</sup>
167. The Commission has received worrying numbers of reports of rapes committed against gay men and trans persons. These acts regularly form part of attacks that combine physical, psychological, and sexual violence, and which may lead to the murder of the victim.<sup>504</sup> The IACHR has also received information concerning the related stigma faced by gay men who are victims of sexual violence.<sup>505</sup> Forcible introduction of objects into the anus appears to be a common way of inflicting excruciating pain on victims, and is usually a part of brutal acts of violence perpetrated against gay men and trans women.
168. In the United States in 2010, a gang kidnapped and brutally raped two 17-year-old gay adolescents and a 30-year-old gay man, using a baseball bat and the wooden handle of a plunger. The act was carried out as punishment for the victims being gay and having admitted to having sex with each other. The victims were also tied and burned with cigarettes on their nipples and penises.<sup>506</sup> In 2007, several men in Trinidad and Tobago who were seeking sexual partners on a popular internet site fell victim to a pattern of crimes. In the worst instances they were kidnapped, tortured, robbed, gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) was able to document a number of these assaults by interviewing victims. Only one of these victims has pursued police action, and none of the rape victims who were interviewed had sought medical attention.<sup>507</sup> In 2013, the IACHR received

<sup>501</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 310.

<sup>502</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 6.

<sup>503</sup> IACHR, Public Hearing on the *Human Rights of Intersex Persons*, March 2013.

<sup>504</sup> Ojo.pe, "*Deaquella y viola gay en plena calle*," November 13, 2011 (available only in Spanish).

<sup>505</sup> The Advocate, *Gay Male Sexual Assault Survivors Speak Out*, January 27, 2015.

<sup>506</sup> New York Times, *Lured Into a Trap, Then Tortured for Being Gay*, October 8, 2010.

<sup>507</sup> IACHR, Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008. Video y audio no disponibles.

- information about a case in Brazil in which a former alderman was viciously stabbed 106 times and was anally penetrated with the handle of a sickle.<sup>508</sup>
169. During the October 2014 visit to Colombia of the Chair of the IACHR, the Rapporteurship on the Rights of LGBTI Persons was informed of the case of a trans woman in Barranquilla who, after suffering many years of attacks and discrimination, was brutally raped by a group of four men who introduced several ants into her anus. She committed suicide shortly after the episode.<sup>509</sup>
170. The Commission has also received reports of acts of rape which appear to have a distinct and clear motivation: so-called “corrective rapes,” which are an extreme manifestation of prejudice against diverse sexual orientations and gender identities, and are perpetrated especially against lesbian or bisexual women. “Corrective rape” has been defined as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.”<sup>510</sup> Behind this crime lies the perverse and erroneous belief that being penetrated by a male will render the woman “normal” again. Former UN High Commissioner for Human Rights, Navi Pillay, stated that “corrective” rape commonly combines “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.”<sup>511</sup>
171. The IACHR recognizes that the very concepts of “corrective rape” and “corrective sexual violence” are incoherent and deplorable, since any attempt to “correct” a fundamental aspect of a human being’s identity by violence is repugnant to human dignity and decency. The essence of these crimes is punishment for non-normative sexualities and genders. As the Inter-American Court has noted, rape is an extremely traumatic experience.<sup>512</sup> It causes great physical and psychological damage that is difficult to overcome even with time, and it leaves the victim “physically and emotionally humiliated.”<sup>513</sup> The IACHR notes that this type of sexual violence ranks among the least reported types of violence against LGBT persons in the Americas. In addition to the reasons why victims are often deterred from reporting sexual violence generally, such as shame and re-victimization, the reporting of this type of sexual violence may additionally raise victims’ fears of revealing their sexual orientation.

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<sup>508</sup> Grupo Gay da Bahia (GGB), *“Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014”* (Available only in Portuguese), p. 3; UOL.com, *“Ex-vereador foi morto com mais de 100 facadas e teve cabo de foice introduzido no ânus.”* May 25, 2013 (available only in Portuguese).

<sup>509</sup> IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (Cali and Tumaco). Information provided by human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.

<sup>510</sup> Keren Lehavot and Tracy L. Simpson, *Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities*, June 27, 2013.

<sup>511</sup> Pillay, Navi *“The shocking reality of homophobic rape”* in *The Asian Age*, June 20, 2011.

<sup>512</sup> Cfr. U.N., Human Rights Commission. 50<sup>th</sup> Session. Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments. Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance to resolution 1992/32 of the Human Rights Commission. Doc. E/CN.4/1995/34 of January 12, 1995, para. 19.

<sup>513</sup> Cfr. Eur.C.H.R., *Case of Aydin v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.

172. During the 2014 visit of the Chair of the IACHR to Colombia, the LGBTI Rapporteurship also received testimonies of several lesbian and bisexual women who had been raped as a punishment due to their sexual orientation.<sup>514</sup> One of these testimonies stood out: “the [IACHR] delegation heard a story of a young afro-descendant woman who, after telling her father she was a lesbian at the age of 11, was allegedly subjected to rape during a 14-year period by her father’s friends, which resulted in five children. She alleges that she was not given information on health services or access to justice. After she managed to escape, she was then raped several times at the hands of illegal armed groups, often in front of her partners, as a punishment for her sexual orientation, and has been consequently internally displaced several times.”<sup>515</sup>
173. Further, several sources indicate that rape against lesbian women or those perceived as such is an issue of particular concern in Jamaica.<sup>516</sup> To name a few of the reported incidents, in 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days. During this time, different religious men raped her repeatedly, day after day, in an attempt “to make her take men” and “live as God instructed.”<sup>517</sup> In 2008, four more cases with similar facts were reported to local organizations. In all of these cases the women refused to report the matter to the police out of fear of further victimization.<sup>518</sup> At least another three episodes of rape were reported in 2009.<sup>519</sup> In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her “butch” or “manly” attire. After she was raped, the rapists cut her with a knife “so she could better take men.” A few days after that episode, a friend of the first woman was abducted in a car at knifepoint, brutally raped, and then left on the side of the road half-naked. The women refused to go to the police because of the perceived ineffectual nature of any police response.<sup>520</sup> In at least one case, a foreign court has made explicit reference to the risk of rape of lesbian women when granting asylum to a Jamaican lesbian due to the risk of violence to lesbians in Jamaica.<sup>521</sup>

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<sup>514</sup> IACHR Chair meeting with the National Table of Victims affected by the Armed Conflict. Cartagena, Colombia. October 3, 2014.

<sup>515</sup> IACHR, Press Release No. 118/14, “*IACHR Chair concludes visit to Colombia*,” October 10, 2014.

<sup>516</sup> IACHR, Hearing on *Follow-up to the IACHR Report on the Situation of Human Rights in Jamaica*, 150<sup>th</sup> Period of Sessions, 27 March 2014; Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*. October 2011, p. 14; AIDS-Free World, *Protect Lesbian and Gay Population: A letter by Maurice Tomlinson to the Jamaica Observer*, September 23, 2010; The Gleaner, *Lesbians Targeted By Men Who Want To ‘Straighten Them Out’*, December 3, 2014.

<sup>517</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

<sup>518</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

<sup>519</sup> Gay Lesbian Bisexual Transgender & Queer Jamaica (GLBTQJ), “*‘Corrective Rape’ in Jamaica? ..... Yes,*” August 5, 2009.

<sup>520</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 34.

<sup>521</sup> United Kingdom Upper Tribunal Immigration and Asylum Chamber (UTIAC), *SW (lesbians - HJ and HT applied)*, UKUT-251, decision of June 24, 2011, para. 107(2).

174. The IACHR has received several reports this type of sexual violence in other OAS Member States.<sup>522</sup> Organizations from Haiti have indicated that in 2012, five police officers gang-raped two lesbians and during the attack they told them: “You have never been with a man? You are not a real woman! We will make you one!”<sup>523</sup> In another case in 2012, two women who were engaging in romantic behavior in a car were suddenly interrupted by four police officers on patrol. The police officers proceeded to rape the women.<sup>524</sup> In Ecuador, this type of sexual violence has been reported to take place as one of the heinous methods employed in the “clinics of de-homosexualization,” which are described in more detail later in this chapter.<sup>525</sup>
175. Sexual violence generates psychological and emotional suffering and scarring. Further, sexual violence may cause physical injury—including life-threatening wounds, as is the case when anal or vaginal rape is performed with large or sharp objects—and greater susceptibility to HIV infection. Taking into account that LGBT and gender non-conforming persons are at high risk of being denied medical treatment or being further victimized when seeking health care following a sexual assault, the impact of sexual assaults on LGBT and gender non-conforming persons may, in some cases, be even more serious than for other victims that do not identify as LGBT or are not perceived as such.

### 3. Mob attacks

176. In the past few years, the IACHR has also received information about alarming numbers of angry mob attacks, particularly in countries in the Caribbean. During the months of August and September 2013, the Commission received various accounts of attacks consisting of “large crowds barricading, throwing objects (such as stones and Molotov cocktails), or calling for lynching of gay men. At least seven of these attacks were reported in the past two months: 5 in Jamaica and 2 in Haiti.”<sup>526</sup> These attacks usually start with a person or a group of persons being “singled out” as gay or trans.<sup>527</sup> by passers-by in public places. Tension tends to escalate quickly and, within minutes, large numbers of people may gather around the victim or victims. Several reported cases include victims being chased while trying to escape or having bottles, stones, or other objects thrown at them. In cases

<sup>522</sup> See, among others: [Peru] Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2010*, 2011, p. 81; [Paraguay] Heartland Alliance - Aireana, *Human Rights Violations of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Paraguay: A Shadow Report*, March 2013, para. 17(e); See also *Ultimahora.com*, “*Romper el silencio*,” February 5, 2014.

<sup>523</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Madre et. al.*, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>524</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Madre et. al.*, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>525</sup> Fundación de Desarrollo Integral “Causana,” “*Clinicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*,” February 20, 2014, p. 3.

<sup>526</sup> IACHR, Press Release No. 79/13. *IACHR Expresses concern about Mob attacks, police abuse and other forms of violence against LGBTI persons*, October 24, 2013.

<sup>527</sup> The word used may not necessarily be “gay” but instead can be local expressions such as “battyman,” “sissy boy,” “shemale,” or other offensive epithets.

where a crowd surrounds the victim, physical violence may escalate to the point of leaving the victim severely wounded or even dead.

177. In particular, the Commission has received reports of mob attacks occurring with unsettling frequency in Jamaica.<sup>528</sup> The information presented indicates that a number of mob attacks against gay men or those perceived as such took place in December 2005,<sup>529</sup> February 2007,<sup>530</sup> March 2007,<sup>531</sup> and in 2008.<sup>532</sup> In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Reportedly, villagers also confronted the police when they arrived at the scene and tried to protect the three men.<sup>533</sup> Another alarming case took place in 2012 at the University of Technology, Jamaica, when a student was chased by a group of male and female students through the university campus. The victim was able to reach the security office, where the mob remained screaming outside. A video shows how at least two guards slapped, kicked and punched the student in front of the crowd, while members of the mob began entering through the security office windows.<sup>534</sup> A few months later, the guards were released after the student decided to drop the case.<sup>535</sup>
178. Further, in 2013 there were several reports of mob attacks in Jamaica. In July 2013, Dwayne Jones, a 16-year-old transgender teen, was stabbed to death by a mob at a party in Jamaica.<sup>536</sup> According to available press reports, a group of men gathered around Jones after someone had told them that Jones was trans. Jones was viciously stabbed and shot to death and then thrown into nearby bushes. Jones was reported to have suffered relentless teasing in high school for being considered “an effeminate boy,” until dropping out for good. Jones had also been expelled from her house at the age of 14 and had resorted to living on the street.<sup>537</sup> One year after the murder, a local organization indicated that no arrests had been made in the case.<sup>538</sup> Upon a request for information made by the IACHR,<sup>539</sup> the State responded

<sup>528</sup> See IACHR, *Annual Report 2014, Chapter V: Follow-up of Recommendations issued by the IACHR in its country or thematic reports, Report on the Situation of Human Rights in Jamaica*, para. 173 and ff.

<sup>529</sup> Jamaica Forum for Lesbians, All Sexuals and Gays (J-FLAG), *Statement on the death of Nokia Cowen*, December 28, 2005.

<sup>530</sup> Direland, *Jamaica: Gay Leader Escapes St. Valentine's Day Lynch Mob*, February 21, 2007.

<sup>531</sup> Pink News, *Homophobic violence at Jamaica funeral*, April 12, 2007; Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 31.

<sup>532</sup> The New York Times, *Attacks Show Easygoing Jamaica Is Dire Place for Gays*, February 24, 2008.

<sup>533</sup> CVM TV Jamaica – News Watch: *video*, [minute 3:16], June 21, 2012.

<sup>534</sup> The Gleaner, *“CAUGHT ON TAPE! UTech Security Guards Beat Alleged Gay Student,”* November 2, 2012.

<sup>535</sup> On The Ground News, *“Confirmed: Former UTech guards accused of beating student freed,”* August 31, 2013.

<sup>536</sup> The Jamaica Gleaner, *J-FLAG Condemns Mob Killing Of Alleged MoBay Cross-Dresser*, July 24, 2013; The Huffington Post Gay Voices, *Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report*, August 11, 2013; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

<sup>537</sup> Human Rights Watch, *Jamaica: Cross-Dressing Teenager Murdered*, August 1, 2013; The New York Post, *Transgender teen killed by mob in Jamaica after wearing dress to party - casts light on nation's 'rabid homophobia'*, August 11, 2013.

<sup>538</sup> Quality of Citizenship Jamaica (QCJ), Press Release: *Dwayne ‘Gully Queen’ Jones One Year Later*, July 22, 2014; Jamaica Observer, *Justice Minister condemns killing of St James cross-dresser*, July 29, 2013; IACHR,

that investigations were ongoing; forensic materials had been collected, thirteen statements had been recorded, and two suspects had been interrogated and later released due to insufficient evidence for prosecution.<sup>540</sup>

179. According to a report received by the IACHR, on August 1, 2013, in Jamaica, a crowd quickly gathered around a police patrol car and started harassing two men inside who were perceived to be gay. Police officers had to disperse the crowd using warning shots and pepper spray.<sup>541</sup> On the very same day, the police had to be called to rescue two gay men from another irate crowd that claimed the men “were engaging in an illegal activity in a house” in St. Catherine.<sup>542</sup> Only ten days after these incidents, the IACHR received information that, on August 10, 2013, police personnel had to rescue a trans person in St. Catherine, after an angry mob that had seen her in the community threatened to flog her.<sup>543</sup> On August 22, 2013, another irate mob barricaded five gay men in their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety.<sup>544</sup> Additionally, on August 26, 2013, local media reported that two men had to seek refuge when, after the men had arrived at a police station following their involvement in a motor vehicle accident, angry local residents said that the men “appeared” to be gay. Police officers had to escort the men out of the police station and away from the angry mob that had gathered outside.<sup>545</sup> Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.<sup>546</sup>
180. On October 2, 2013, the IACHR sent a letter to the Jamaican State asking for specific information on measures taken in response to these mob attacks, particularly regarding policies adopted to prevent future acts of violence against LGBT persons, or those perceived as such.<sup>547</sup> The government replied in part:

It is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.<sup>548</sup>

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Press Release 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

539 IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].

540 Permanent Mission of Jamaica to the OAS, ref. 6/80/1, received November 12, 2013.

541 On The Ground News, *Residents and Police square off over Cops found in ‘compromising position’*, August 2, 2013.

542 The Daily Extra, *Angry crowds surround gay men in two Jamaican incidents*, August 6, 2013. See also, CVM TV (Kingston, Jamaica), *CVM Newswatch*, online video, August 1, 2013 [minute 25:27].

543 The Jamaica Star Online, *Cops Rescue Man In Girl Clothes, Save Him From Angry Mob*, August 14, 2013.

544 The Huffington Post Gay Voices, *Jamaica Mob Traps And Barricades 5 Gay Men In House*, August 26, 2013.

545 CVM TV (Kingston, Jamaica), *News at noon*, video, [minute 5:50] August 26, 2013.

546 The Jamaica Gleaner, *“House Occupied By Gays Firebombed,”* October 10, 2013.

547 IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].

548 Permanent Mission of Jamaica to the OAS, Ref. 6/80/1, received November 12, 2013.

181. The Inter-American Commission has received information on mob attacks in other OAS Member States, such as Belize,<sup>549</sup> Haiti,<sup>550</sup> and Saint Lucia.<sup>551</sup> In Haiti, two men thought to be gay were beaten to death during an anti-gay march led by the Haitian Coalition of Religious and Moral Organizations (*Coalition Haïtienne des organisations religieuses et morales*). The march took place in July 2013, in Port-au-Prince, amidst a wave of violence against LGBT persons.<sup>552</sup> Further reports indicate that, in 2011, a mob attacked two gay men living in a camp for internally displaced persons, allegedly because they were engaged in romantic activity in their tent. Attackers ripped into their tent and beat the two men while accusing them of causing the 2010 earthquake.<sup>553</sup>

## ***E. Medical Violence against Intersex Persons***

182. As indicated in chapter two of this Report, the IACHR has received reports of generalized human rights violations carried out against intersex persons because their bodies do not physically conform to socially accepted standards for “female” and “male” bodies.<sup>554</sup> Intersex advocacy groups and organizations have indicated that human rights violations suffered by intersex persons are different from the human rights violations which lesbians, gays, bisexuals and trans persons typically suffer.<sup>555</sup> The IACHR has been informed that specific human rights violations commonly suffered by intersex persons include: irreversible sex assignment and genital “normalizing” surgeries; involuntary sterilization; being subjected to excessive genital exams, photography and display; human experimentation; lack of access to information and medical records or history; delayed birth registration, and denial of health care services or health insurance, among others.<sup>556</sup>

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<sup>549</sup> Channel 7 News Belize, “[Street Mob Attacks Transgender Vanessa Paris](#),” April 9, 2014; Huffington Post, “[Belize Transgender Woman Stoned And Beaten By Mob](#),” 14 April 2014.

<sup>550</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, pp. 1, 2.

<sup>551</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 35.

<sup>552</sup> IACHR, Press Release No. 54/13, *IACHR Condemns Recent Wave of Violence against LGTBI Persons in Haiti*, July 30, 2013; [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, p. 1; Haiti Sentinel, *Haiti: Two assumed homosexuals beaten to death by protest mob*, July 19, 2013.

<sup>553</sup> [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>554</sup> Cabral, Mauro IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

<sup>555</sup> [Zwischengeschlecht.org](#), *Intersex Genital Mutilations: Human Rights Violations of Children with Variations of Sex Anatomy*, March 2014, p. 12.

<sup>556</sup> IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013. See also, Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights*, 2013, p. 2-7. See also, Council of Europe, Commissioner for Human

183. In March 2013, an intersex trans man testified before the IACHR: “[t]he 41-year-old man sitting before you right now was once, a long time ago, a 14-year-old girl who, upon being told that she was born without a vagina or a uterus, was also told that it was necessary to cut part of her intestine in order to surgically ‘create a vagina’. The purpose of that surgery was to ensure that I would grow up to become a woman who could be penetrated by a man. The failure of this procedure is obvious and after two surgeries and six years of vaginal dilations with a piece of metal called a “bougie,” what I can attest to as a consequence of that intervention is the transformation of the healthy teenager that I used to be into the man that I am—someone who survives every day the experience of having been raped repeatedly, while asleep on an operating table.”<sup>557</sup>

184. The IACHR has been increasingly receiving reports of sex assignment and genital surgeries practiced without informed consent on intersex children and adults, most of which are reported to be irreversible in nature and aimed at attempting to “normalize” the appearance of the person’s genitals.<sup>558</sup> The IACHR has been informed of cases documented in Argentina,<sup>559</sup> Brazil,<sup>560</sup> Canada,<sup>561</sup> Colombia,<sup>562</sup> Costa Rica,<sup>563</sup> Chile,<sup>564</sup> El Salvador,<sup>565</sup> Mexico,<sup>566</sup> United States,<sup>567</sup> and Uruguay,<sup>568</sup> among others. Nevertheless, the IACHR has been informed that these interventions are standard practice in countries across the Americas.<sup>569</sup> The Commission notes

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Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015. See also, Montreal Gazette, *My Coming Out: The Lingering Intersex Taboo*, August 9, 2015.

557 Testimony given by Mauro Cabral (Argentina) at IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

558 IACHR, *Public Hearing: Human Rights Situation of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013. IACHR, Public Hearing on *Discrimination against Trans Persons in the Americas*, 153<sup>rd</sup> Period of Sessions, October 30, 2014.

559 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

560 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

561 See articles by Janik Bastien-Charlebois (Université du Québec à Montréal).

562 See below, reference to a decision by the Colombian Constitutional Court.

563 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

564 IACHR, Press Release No. 131A/14, *Report on the 153<sup>rd</sup> Session of the IACHR*, December 29, 2014.

565 United Nations Development Program (UNDP) & “Procuraduría para la Defensa de los Derechos Humanos” (El Salvador), *Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*, 2013, p. 23.

566 See Eva Alcántara Zavala, “Pobreza y condición intersexual en México: reflexiones y preguntas en torno al dispositivo médico,” in *Interdicciones: Escrituras de la Intersexualidad en Castellano* (Mauro Cabral, editor), Córdoba, February 2009.

567 IACHR, Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

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

569 IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

that documentation and data around this problem is scarce,<sup>570</sup> which is addressed in more depth in Chapter 6 of this Report under the obligation of States to collect data.

185. Studies brought to the attention of the IACHR show that “genital-normalizing” surgeries –i.e., interventions with cosmetic purposes– have no medical benefits, because intersex presentations of the body, in the majority of cases, pose no danger to life or health.<sup>571</sup> Intersex organizations and activists refer to these surgeries as “cosmetic” because their only purpose is making bodies look like the dominant standard of what constitutes a “male” or “female” body. The “medical urgency” behind these surgeries during infancy stems from the alleged impossibility of parents, the medical community, the civil registry and society in general to accept sexual “uncertainty” because the infant cannot be easily and promptly classified as a girl or boy.<sup>572</sup> These interventions are carried out because variations in sex characteristics are generally considered obstacles to leading a “normal” life, not because they themselves pose a risk to the lives of intersex persons.<sup>573</sup> Indeed, organizations have reported that these surgeries are part of an attempt to prevent suffering later in life that is caused by “lack of conformity with binary sexual standards.”<sup>574</sup> Given these implications, some intersex organizations and human rights defenders characterize these surgeries as culturally accepted forms of infant genital mutilation.<sup>575</sup>
186. These non-medically necessary surgeries and procedures have been reported to cause intersex children and adults great harm, including—but not limited to—chronic pain, life-long trauma, genital insensitivity, sterilization and diminished or lost capacity for sexual pleasure.<sup>576</sup> Reports indicate that most procedures do not consist of a single intervention, but instead involve multiple invasive surgeries (which repeatedly expose children to the inherent risks of anesthesia and surgery in infancy), recurrent use of dilation contraptions, or administration of hormones.

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<sup>570</sup> This has been acknowledged by States. See, e.g. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 received by IACHR Executive Secretariat on December 2, 2013, p. 2.

<sup>571</sup> Tamar-Mattis, Anne *Exceptions to the Rule: Curing the Law's Failure to Protect Intersex Infants* in *Berkeley Journal of Gender, Law & Justice*, Volume 21, Issue 1, September 2013, p. 99, citing: Ford, Kishka-Kamari, "First, Do No Harm, The Fiction of Legal Parental Consent to Genital-Normalizing Surgery on Intersexed Infants" in *Yale Law & Policy Review*, No. 19, 2001, p. 476; Beh, Hazel Glenn & Diamond, Milton, *An Emerging Ethical and Medical Dilemma: Should Physicians Perform Sex Assignment Surgery on Infants with Ambiguous Genitalia?* in *Michigan Journal of Gender and Law*, No. 7, 2000, p. 7.

<sup>572</sup> Luciana Lavigne, “La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes” in *“Interdicciones: Escrituras de la Intersexualidad en Castellano”* (Mauro Cabral, editor), Córdoba, February 2009, at p. 55.

<sup>573</sup> Luciana Lavigne, “La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes” in *“Interdicciones: Escrituras de la Intersexualidad en Castellano”* (Mauro Cabral, editor), Córdoba, February 2009.

<sup>574</sup> Mulabi & International Gay and Lesbian Human Rights Commission (IGLHRC), *Situation of lesbian, bisexual, transsexual, transgender and intersex women in Costa Rica in regards to discrimination: Shadow Report*, July 2011, p. 9.

<sup>575</sup> IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013;

<sup>576</sup> IACHR, Public Hearing on *Situation of Human Rights of Intersex Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 15, 2013; IACHR, Annex to the Press Release Issued at the close of the 147<sup>th</sup> Period of Sessions, April 5, 2013.

During these processes, intersex children are usually exposed to abusive display and repeatedly examined for training or scientific purposes, which in turn humiliates them and may cause deep psychological harm.<sup>577</sup> For example, the Commission has been informed that regular vaginal dilation is often imposed on a child following vaginoplasty. This is achieved through the repeated forcing of an object into the vagina of a child, a practice which has been described as “extremely painful, highly traumatic, and comparable to sexual abuse in terms of the patient’s experience.”<sup>578</sup> The UN Special Rapporteur on the right to health has described it as “a painful and high-risk procedure with no proven medical benefits.”<sup>579</sup>

187. An intersex person testified before the IACHR: “twenty six years ago a team of medical professionals discovered that I had “XY” chromosomes and internal testes, more commonly referred to today as “partial androgen insensitivity syndrome.” Immediately after that, a surgery was scheduled to remove those internal testes, I was one then. When I was three, another surgery was performed. This time, it was to reduce the size of my clitoris, which was judged to be “half a centimeter too long.” Then, when I was eleven and entering puberty, I underwent a third surgery. This time was to construct a “more acceptable” vagina via the method called “vaginoplasty.” I was lied to and told that I had cancerous ovaries and that the doctors were saviors, and had saved me.”<sup>580</sup>

188. Further, the IACHR was informed that these interventions are regularly carried out without the informed consent of intersex persons or that of their parents or legal guardians. In fact, the UN Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have expressed concern over the lack of informed consent for these surgeries.<sup>581</sup> The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted the importance of informed consent for intersex persons. Further, he recommended that health-care providers strive to postpone non-emergency invasive and irreversible

<sup>577</sup> Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical “Normalization” of Intersex People*, April 28, 2005, pp. 31, 43; Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 5.

<sup>578</sup> Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 3.

<sup>579</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, para. 49.

<sup>580</sup> Testimony by Jen Pigeon Pagonis, IACHR, *Public Hearing on Human Rights Situation of Intersex Persons*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

<sup>581</sup> Committee against Torture (CAT), *Concluding observations: Germany*, CAT/C/DEU/CO/5, December 12, 2011, para. 20; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 77; OHCHR, [Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity](#), A/HRC/19/41, November 17, 2011, para. 57.

interventions until the patient is sufficiently mature to provide informed consent.<sup>582</sup>

189. The IACHR has been informed that medical protocols in force in several OAS Member States are still based on concepts that pathologize all intersex persons and all variations in sex characteristics and usually prescribe surgeries for “normalization” of the genitals. In some cases the consent of the patient may not even be legally required.<sup>583</sup> For example, it is reported that legal provisions in force in some OAS Member States, which allow doctors to make urgent decisions justifying interventions in cases of medical emergency, and which override parental consent have been applied in cases of surgeries that aim at “standardizing” the genitals of intersex children.<sup>584</sup> In other cases, doctors may consult parents but provide scarce or no information on the implications of procedures. A study conducted in the United States by the Human Rights Commission of San Francisco found that many parents choose “normalizing” medical interventions for their intersex children based on misinformation and/or coercion from doctors recommending such procedures.<sup>585</sup> Testimony at IACHR hearings has included that of intersex persons whose parents had asked doctors to do “whatever it takes” to make the intersex persons “normal.”<sup>586</sup>
190. Moreover, a report issued by the United Nations Development Programme (UNDP) and the Office of the Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) in El Salvador noted that legal provisions in the Health Code of El Salvador do not prohibit “sex assignment surgeries” on intersex children and do not require free and informed patient consent, even in cases where the children are old enough to have the capacity to accept or reject such alterations to their bodies.<sup>587</sup> Chilean organizations have reported that in 2003, a 20-year-old man discovered through a series of medical tests that just after his birth, the doctor who had been authorized by his parents to treat an inguinal hernia had in fact removed the child’s testicles and operated on his genitals. According to the report, the parents had neither given consent to gender reassignment nor were they informed after the surgery. Activists alleged that this is not an isolated case in the Chilean

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<sup>582</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, para. 46.

<sup>583</sup> IACHR, *PublicHearing on Discrimination against Trans Persons in the Americas*, 153<sup>rd</sup> Period of Sessions, October 30, 2014; IACHR, *Public Hearing on Human Rights Situation of Intersex Persons*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

<sup>584</sup> IACHR, *Public Hearing on Discrimination against Trans Persons in the Americas*, 153<sup>rd</sup> Period of Sessions, October 30, 2014. Activists referred to the case of Article 46 of the Costa Rican Code of Children and Adolescents (Law No. 7.739): “Article 46: Denial of consent. If parents, legal representatives or guardians refused to consent, for any given reason, the urgent hospitalization, treatment or surgery of any of their children, the medical professional will be entitled to take the necessary steps to protect their life or their physical or emotional integrity, in accordance with Article 144 of the Family Code.”

<sup>585</sup> Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical “Normalization” of Intersex People*, April 28, 2005, p. 19.

<sup>586</sup> Human Rights Commission of The City & County of San Francisco, *A Human Rights Investigation into the Medical “Normalization” of Intersex People*, April 28, 2005, p. 42.

<sup>587</sup> United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), *Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*, 2013, p. 23.

public healthcare system.<sup>588</sup> According to a researcher of intersex issues in Brazil, it is extremely rare that doctors decide not to conduct surgeries on intersex children at birth.<sup>589</sup>

191. In an inter-agency statement, several international UN human rights bodies and agencies have noted that these surgeries and procedures may result in the termination of all or some of the reproductive capacity of intersex persons.<sup>590</sup> Sex-assignment treatments often involve the removal of viable gonads or other internal and external reproductive organs, leaving intersex persons with permanent, irreversible infertility.<sup>591</sup>
192. The IACHR emphasizes that forced and involuntary sterilization of intersex persons represents a serious human rights violation. Involuntary sterilization has serious implications for the physical and psychological integrity, right to reproductive autonomy, and right to self-determination of intersex persons. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics should be reviewed and modified accordingly in order to ensure that intersex persons can effectively enjoy the highest attainable standard of health and other human rights.<sup>592</sup>
193. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.”<sup>593</sup>
194. The IACHR notes that the principle of free, prior and informed consent is of utmost importance and must be the guiding principle in every decision made in relation to surgeries, procedures, hormone treatments, or any other medical treatment of intersex persons. The Inter-American Commission on Human Rights recommends that OAS Member States make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person. Amendments must be

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<sup>588</sup> Global Rights, IGLHRC, MOVILH, Organización de Transexuales Masculino, *Violations of the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Chile: A Shadow Report*, 2008, p. 12.

<sup>589</sup> Information provided by Paula Sandrine Machado, *Public Hearing on Human Rights Situation of Intersex Persons*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

<sup>590</sup> Office of the High Commissioner for Human Rights, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and the World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, p. 7.

<sup>591</sup> Advocates for Informed Choice (Tamar-Mattis, Anne), *Report to the Inter-American Commission on Human Rights: Medical Treatment of People with Intersex Conditions as a Human Rights Violations*, 2013, p. 4.

<sup>592</sup> Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, p. 9. Regarding the issue of “pathologization” of intersex persons, the IACHR takes note of a document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled *Intersex issues in the ICD: a revision*, drafted following a consultation held in Geneva on September 8-9, 2014.

<sup>593</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 32; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, July 28, 2008, para. 47.

made to medical protocols to ensure the right to autonomy of intersex persons: intersex persons must decide for themselves whether they want to undergo surgeries, treatment or procedures.<sup>594</sup> Considering that the majority of these medical interventions are not medically necessary and given that, in general, there is a high risk that they will cause irreversible damage to the physical and mental health of intersex persons, those interventions can only be undertaken when the intersex child can provide his or her prior, free and informed consent. Surgeries and other medical interventions that are not medically necessary must be postponed until intersex persons can decide for themselves.

195. Finally, according to information provided by human rights defenders, activists and intersex persons during the March 2013 public hearing, the Inter-American Commission on Human Rights recommends OAS Member States to (i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitization campaigns at the national level on the short-term and long-term effects of “normalizing” interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in order to bring down stereotypes, stigma and invisibility surrounding intersex persons.

## ***F. Other Forms of Violence in the provision of health services***

196. According to reports received by the IACHR, mistreatment, harassment, and even physical violence are part of the experience of LGBT persons seeking medical attention in many OAS Member States. Echoing these reports, UN human rights bodies have expressed concern over cases of mistreatment suffered by LGBT persons when trying to access health care services.<sup>595</sup>
197. In a study carried out in the United States in 2009 by civil society organizations, almost 56% of lesbian, gay or bisexual respondents and 70% of transgender and gender-nonconforming respondents affirmed that they had experienced at least one of the following types of discrimination or aggression: being refused needed care; being blamed for their health status; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh

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<sup>594</sup> IACHR, Public Hearing on *Human Rights Situation of Intersex Persons*, 147<sup>th</sup> Period of Sessions, March 15, 2013.

<sup>595</sup> See e.g. [Chile] Human Rights Committee, *Concluding observations: Chile*, CCPR/C/CHL/CO/5, May 18, 2007, para. 16; [Costa Rica] Committee on the Elimination of Discrimination against Women, *Concluding Observations: Costa Rica*, CEDAW/CRI/CO/5-6, July 29, 2011, para. 40.

or abusive language; or health care professionals being physically rough or abusive.<sup>596</sup>

198. The State of Honduras even brought to the attention of the IACHR a report showing that medical professionals who are religious have been reported to mistreat LGBT patients, expressing to them that their existence is a “sin before God.”<sup>597</sup> For its part, the State of Paraguay acknowledged that prejudice and violence against LGBT persons in medical environments was one of the reasons why LGBT persons refrained from seeking medical assistance.<sup>598</sup>
199. Besides mistreatment, civil society organizations have reported that LGBT persons are frequently refused care or treatment based on their sexual orientation, gender identity or appearance. This refusal may take the form of overt denial or of continuous referral of the patient to other professionals. There are reports of LGBT persons who have seen their health quickly deteriorate due to denial of health care and even cases of deaths that would have been preventable had appropriate treatment been afforded.<sup>599</sup> One extreme example of denial of medical treatment was the case of Robert Eads, a trans man from the United States who was diagnosed with ovarian cancer. It was reported that at least twelve medical professionals refused to treat him because they feared that “treating this case of gender variance would hurt the reputation of their medical practices.”<sup>600</sup>

## ***G. Violence related to attempts to “change” sexual orientation and gender identity***

200. The IACHR has received reports of violence against LGBT persons, or those perceived as such—especially children, adolescents and young adults—that aims at attempting to modify their sexual orientation or gender identity. The information received points to instances in which LGBT persons or those perceived as such are subjected to purported psychotherapeutic treatment, internment in “clinics” or camps, and physical abuse. Further, women are also subjected to rape and other acts of sexual violence, with the purpose to punish

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<sup>596</sup> Lambda Legal, *When Health Care Isn't Caring* Lambda Legal's: Survey on Discrimination against LGBT People and People Living with HIV, 2010, p. 10.

<sup>597</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Paraguay, No. 1079/13/MPP/OEA dated December 26, 2013, p. 2.

<sup>598</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 17.

<sup>599</sup> United Nations Development Programme (UNDP), *Discussion Paper: Transgender Health and Human Rights*, December 2013, p. 17; [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Fundación Manos que Construyen Paz,” received by IACHR Executive Secretariat on 20 December 2013, p. 7; [Guyana] Carrico, Christopher, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 21; [United States] National Center for Transgender Equality and the National Gay and Lesbian Task Force, *National Transgender Discrimination Survey: Report on Health and Health Care*, October 2010, p. 6.

<sup>600</sup> Ravishankar, Mathura, *The Story about Robert Eads in The Journal of Global Health*, January 18, 2013.

them because of their real or perceived sexual orientation and gender identity.<sup>601</sup> In a joint statement with UN independent experts and the UN Committee on the Rights of the Child, the IACHR found that “young LGBT persons are subjected to harmful so-called ‘therapies’ intended to ‘modify’ their orientation or identity. Such therapies are unethical, unscientific and ineffective and may be tantamount to torture.”<sup>602</sup>

201. The Pan-American Health Organization (PAHO) and UN human rights experts have questioned purported psychotherapeutic treatment aimed at changing a person’s sexual orientation or gender identity,<sup>603</sup> asserting that such treatments have “no medical indication and represent a severe threat to the health and human rights of the affected persons.”<sup>604</sup> In this regard, PAHO has affirmed that “[b]esides the lack of medical indication, there is no scientific evidence for the effectiveness of sexual re-orientation efforts. While some persons manage to limit the expression of their sexual orientation in terms of conduct, the orientation itself generally appears as an integral personal characteristic that cannot be changed. At the same time, testimonies abound about harms to mental and physical health resulting from the repression of a person’s sexual orientation.”<sup>605</sup> Moreover, some OAS Member States,<sup>606</sup> as well as several professional health associations, have provisions either restricting or prohibiting these so-called “therapies.”<sup>607</sup>

<sup>601</sup> In this regard, see previous section of this chapter which addresses rape and other forms of sexual violence against women.

<sup>602</sup> Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa, and Commissioner for Human Rights of the Council of Europe. IACHR, Press Release No. 49/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>603</sup> See, among others: Pan American Health Organization, “Cures” for an Illness that does not exist, 2012, p. 1; OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 2011, para. 56; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, February 1, 2013, para. 76; UN, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/14/20, April 27, 2010, para. 23; UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 24.

<sup>604</sup> Pan American Health Organization, “Cures” for an Illness that does not exist, 2012.

<sup>605</sup> Pan American Health Organization, “Cures” for an Illness that does not exist, 2012.

<sup>606</sup> [Argentina] Law 26.657, Article 3(c) [Law on Mental Health] (forbids medical diagnosis on the basis of sexual choice or sexual identity); [Ecuador] Ministry of Health, Ministerial Agreement No. 767, June 2012 (prohibits the administration of any treatment aimed at “curing” sexual orientation or gender identity). [United States, California] California Business and Professions Code, Section 865-865.2 (In July 2013, the United States Supreme Court denied *certiorari* in a case in which this provision was questioned on several grounds, thereby confirming judicial decisions of lower courts which had established its constitutional validity) See, among others: The New York Times, *Supreme Court Declines Case Contesting Ban on Gay ‘Conversion Therapy’*, June 30, 2014; [United States, District of Columbia] B20-0501, Conversion Therapy for Minors Prohibition, Amendment Act of 2013; [United States, New Jersey] Assembly No. 3371, State of New Jersey 215th legislature. Approved P.L.2013, c.150; [United States, Oregon] *Oregon governor signs bill banning conversion therapy for LGBT youth*, May 19, 2015. [United States, Illinois] On May 19, 2015, the Illinois state House approved a bill in this regard, which was sent to the Senate for approval.

<sup>607</sup> [Brazil] Federal Council of Psychology, *Resolution 001/99*, March 22, 1999; [Canada] “Ordre des psychologues du Québec,” “*Les interventions qui visent à changer l’orientation sexuelle*,” November 23, 2012; [Costa Rica] “Colegio Profesional de Psicólogos de Costa Rica,” “*La homosexualidad no es una enfermedad*,” February 25, 2013 [Paraguay] “Sociedad Paraguaya de Psiquiatría,” “*Comunicado de la sobre*

202. The IACHR has received information on the existence of centers for “treating” LGBT persons in Ecuador, Peru,<sup>608</sup> the Dominican Republic,<sup>609</sup> and the United States.<sup>610</sup> The person under “treatment” is confined to a center, a boarding school or “clinic,” most times against their will or through deception, and subject to very strict regimes. These regimes usually include inhumane or degrading treatment and even sexual abuse as part of the “procedure” to attempt to change their sexual orientation or gender identity.
203. Since 2008, Ecuadorian civil society organizations have informed the IACHR about the existence of “*clínicas de deshomosexualización*.” Local organizations have reported the existence of these clinics since at least 2002, and have alleged that the State has failed to take appropriate action to close them.<sup>611</sup> According to the information received by the Commission, these “clinics” are privately run but remain under the control of either the National Council for Narcotics and Psychotropic Substances (“Consejo Nacional de Estupefacientes y Sustancias Psicotrópicas,” “CONSEP”) or the Ministry of Health, or under the control of both entities simultaneously.<sup>612</sup> Reports indicate that authorities failed to control the appointment of professionals in these clinics, many of whom were not health professionals but religious extremists, failed to control housing conditions, and failed to supervise the legality of procedures through which “patients” were committed to residential clinics. When organizations tried to access information on the clinics, official data from different governmental agencies showed discordant information, incomplete or defective data, and lack of awareness of reports of mistreatment filed against several “clinics.”<sup>613</sup>
204. Although there have been reports about young gay men or men perceived as gay being committed to these clinics,<sup>614</sup> civil society reports indicate that young

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*la homosexualidad*”, May 17, 2011; [United States] American Psychiatric Association, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, August 5, 2009.

608 Peru.com, “*Lima: Conoce la terapia de un centro para dejar la homosexualidad*,” August 24, 2013. See also, Promsex, “*IV Informe Anual sobre Derechos Humanos de Personas Trans, Lesbianas, Gays y Bisexuales en el Perú*,” 2011.

609 Advocate.com, *Abuse in the Name of Christianity*, October 10, 2013; Newsweek, *Where American Teens were Abused in the Name of God*, July 7, 2014. Information also presented in the context of a public hearing held on the human rights situation of LGBT persons in the Dominican Republic, 156<sup>th</sup> Period of Sessions, October 23, 2015.

610 National Gay and Lesbian Task Force Policy Institute, *Youth in the Crosshairs. The Third Wave of Ex-Gay Activism*, 2006, pp. 11-14; The New York Times, *Gay Teenager Stirs a Storm*, July 17, 2005.

611 Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 1; Taller de Comunicación Mujer, *Situation of lesbian and trans and women in Ecuador: Shadow Report (CEDAW)*, September 2008, p. 7.

612 IACHR, *Public Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133 Period of Sessions, October 23, 2008; Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4.

613 Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4; See also: Taller de Comunicación Mujer, “*Análisis estadístico de clínicas de ‘rehabilitación’ en el Ecuador*”, January 2012.

614 El Telégrafo, “*El maltrato reina en centros de ‘deshomosexualismo’*,” August 29, 2011 (available only in Spanish); El Universo, “*Ignorancia, silencio y cequera sociales que aún destrozan vidas*,” June 27, 2011 (available only in Spanish); El Universo, “*Me declararon incapacitada mental y me torturaron porque soy*

women have been the main targets.<sup>615</sup> Family members try to have the victim institutionalized once becoming aware of his or her sexual orientation or gender identity. Family members often deceive or even kidnap the victim;<sup>616</sup> there have been cases in which victims were allegedly handcuffed or drugged so that they would not resist.<sup>617</sup> It has also been reported that family members have paid considerable amounts of money to these centers.<sup>618</sup>

205. Accounts of survivors indicate that once interned, they were: exposed to systematic verbal abuse, yelling, humiliation, and rape threats;<sup>619</sup> housed in overcrowded rooms;<sup>620</sup> held in isolation for long periods of time;<sup>621</sup> deprived of food for several days or forced to eat unsanitary food or drink water from wells infested with dead toads, cockroaches and other insects;<sup>622</sup> forced to “dress and behave like prostitutes to learn feminine behavior” and have sexual relations with other male interns by order of their “therapists;”<sup>623</sup> kept in handcuffs for more than three months or chained to toilets that were being used by other persons;<sup>624</sup> awakened with cold water buckets or urine being thrown on them;<sup>625</sup> subjected to

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*lesbiana’*,” April 8, 2005 (available only in Spanish); Têtu, “*Équateur: les terribles «cliniques de quérison» pour homos n’ont pas fermé*,” May 2012 (Available only in French).

<sup>615</sup> IACHR, *Public Hearing on the Human Rights Situation of LGBTI Persons in the Andean Region*, 150<sup>th</sup> Period of Sessions, March 28, 2014; “Taller de Comunicación Mujer”, *Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*, September 2009, p. 7.

<sup>616</sup> Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador [Casos por discriminación a mujeres lesbianas en el Ecuador]*, June 2005, p. 17; Taller de Comunicación Mujer, “*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*”, September 2009, p. 7.

<sup>617</sup> Taller de Comunicación Mujer, “*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*”, 2014, p. 10; “Fundación de Desarrollo Integral ‘Causana,’” “*Clinicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*”, February 20, 2014, p. 2; Fundación Ecuatoriana Equidad, *Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*, 2013, p. 41.

<sup>618</sup> PROMSEX, Fundación Ecuatoriana Equidad, Igualdad LGBT, “*Informe sobre la situación de derechos humanos de las personas LGBTI en la Región Andina*”, March 2014, p. 10.

<sup>619</sup> Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Económicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador [Casos por discriminación a mujeres lesbianas en el Ecuador]*, June 2005, p. 18.

<sup>620</sup> Taller de Comunicación Mujer, “*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*”, September 2009, p. 9.

<sup>621</sup> La Hora, “*30 clínicas ‘contra’ la homosexualidad fueron clausuradas*,” August 20, 2011 (Available only in Spanish).

<sup>622</sup> Taller de Comunicación Mujer, “*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*”, September 2009, p. 9; ExploRed, “*Deshomosexualización: nuevos casos*,” July 18, 2013 (Available only in Spanish); Univisión Noticias, “*Ecuatoriana es internada por sus padres en centro anti-gay*,” June 18, 2013 (Available only in Spanish).

<sup>623</sup> Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador [Casos por discriminación a mujeres lesbianas en el Ecuador]*, June 2005, p. 18.

<sup>624</sup> CNN Mexico, “*Clinicas ecuatorianas violan derechos humanos para ‘curar’ a homosexuales*,” January 30, 2012 (Available only in Spanish).

<sup>625</sup> Regional Tribunal on Economic, Social and Cultural Rights of Women [Tribunal Regional de los Derechos Economicos Sociales y Culturales de las Mujeres], *Cases of Discrimination against Lesbian Women in Ecuador [Casos por discriminación a mujeres lesbianas en el Ecuador]*, June 2005, p. 21.

electroshock therapy;<sup>626</sup> and touched, molested and even raped by custodial personnel.<sup>627</sup> There have also been reports of “clinics” in which victims were forced to feed livestock and operate a slaughterhouse.<sup>628</sup>

206. The IACHR has received information on the existence of these centers in Ecuador over the years.<sup>629</sup> In 2009 the UN Human Rights Committee urged the Ecuadorian State to take measures to prevent the detention of persons in these centers and to investigate and provide reparations.<sup>630</sup> According to estimates by civil society organization, at least 361 of these “clinics” had been identified between 2005 and 2014.<sup>631</sup>

207. It is reported that Clara was waiting to go home with her parents when three men approached her, grabbed her by her hands and told her that “anything she said could be used against her.” Her mother was just behind them. Clara demanded to see an arrest warrant, but the men instead threw her into a car and tried to handcuff her. Clara’s mother approached the car and told the men not to handcuff her. During the ride, Clara realized she was being “arrested” by her own family. Her father followed the car in a taxi behind them. She was in the backseat held at gunpoint by two men, each holding one of her legs. Minutes later they arrived at the “Julio Endara” psychiatric hospital. Clara saw her father and one of the men talking to a hospital guard. She was taken to a room where a female doctor injected a sedative which made her feel numb and incapable of reacting. She was then taken to a “clinic” in Chone, in the Ecuadorian province of Manabí, where she was locked up.<sup>632</sup>

208. In 2013 the State of Ecuador informed the IACHR that its Health Ministry was addressing the closure of these “clinics” and that by 2011 approximately 30 of them had been shut down. It also indicated that electroshock therapy and administration of medication were among the procedures carried out in these

<sup>626</sup> El Universo, “*Ignorancia, silencio y cequera sociales que aún destrozan vidas*,” June 27, 2011 (Available only in Spanish); El Tiempo, “*Liberan a 17 personas retenidas en clínica clandestina en Quito*,” November 8, 2013 (Available only in Spanish).

<sup>627</sup> Taller de Comunicación Mujer, “*Situación de las mujeres lesbianas en Ecuador: Pacto Internacional de Derechos Civiles y Políticos, Informe Sombra*,” September 2009, p. 9; Fundación de Desarrollo Integral “Causana,” “*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*,” February 20, 2014, p. 3; ExploRed, “*Deshomosexualización: nuevos casos*,” July 28, 2013 (Available only in Spanish).

<sup>628</sup> Fundación de Desarrollo Integral “Causana,” “*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*,” February 20, 2014, p. 3.

<sup>629</sup> See e.g., IACHR, Press Release No. 23A/2013, “*Annex to the Press Release issued at the close of the 147<sup>th</sup> Session*,” April 5, 2013.

<sup>630</sup> Human Rights Committee, *Concluding observations by the Human Rights Committee: Ecuador*, CCPR/C/ECU/CO/5, November 4, 2009, para. 12.

<sup>631</sup> Taller de Comunicación Mujer, “*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*,” 2014, p. 5.

<sup>632</sup> Taller de Comunicación Mujer, “*Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW)*,” 2014, p. 10.

clinics.<sup>633</sup> The State of Ecuador created a special commission (“*Comisión Técnica Interinstitucional Nacional por la lucha de los Derechos Humanos*,” “CTIN”) to investigate clandestine centers. The membership of this commission comprises staff from the Ministry of Health, the Office of the Ombudsman, and the Attorney General’s Office.<sup>634</sup> Additionally, according to the information received, the Ministry of Health issued Ministerial Agreement No. 767 prohibiting the administration of any treatment aimed at “curing” sexual orientation or gender identity. The IACHR recognized the State’s efforts in this regard, and encouraged it to adopt all measures necessary to prevent the existence of these clandestine centers and to investigate them, as well as to punish those responsible.<sup>635</sup>

209. However, civil society organizations have alleged that once a few cases had gained notoriety through the media, these “clinics” no longer advertise their “services of modification” of sexual orientation, but instead began to run their programs under the façade of rehabilitation for alcohol or drug abuse.<sup>636</sup> They have also alleged that due to lack of effective State control, some of the “clinics” that had been shut down quickly reopened under different names and continued to operate freely;<sup>637</sup> others received the help of informants from the Ministry who leaked information about inspections and controls.<sup>638</sup>
210. The Inter-American Commission has been informed that most victims are extremely reluctant to come forward and officially report these brutal acts to the authorities, for a variety of reasons.<sup>639</sup> In many cases, this is either because family members were involved in the abductions, or because law enforcement officials were involved in the wrongdoing and victims feared reprisals. More generally, victims are deterred by lack of protections for those who report these crimes and a pervasive perception of impunity. In many cases the perpetrators were able to obtain written “consent” from the victims, and the victims believed that the existence of these documents precluded their possibilities of seeking justice.<sup>640</sup> According to information received by the Commission, at least 20 formal reports

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<sup>633</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 2, 9.

<sup>634</sup> Defensoría del Pueblo de Ecuador, “*Aportes de la Defensoría del Pueblo de Ecuador a la elaboración de la Lista de Cuestiones Previa a la presentación del Sexto Informe Periódico de Ecuador al Comité de Derechos Humanos*”, January 28, 2014 p. 4.

<sup>635</sup> IACHR, *IACHR expresses concern about violence and discrimination against LGTBI persons, particularly youth, in the Americas*, August 15, 2013.

<sup>636</sup> IACHR, Public Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008.

<sup>637</sup> IACHR, Public Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008.

<sup>638</sup> Fundación de Desarrollo Integral “Causana,” “*Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?*”, February 20, 2014, p. 5.

<sup>639</sup> Information submitted to the IACHR by “Taller de Comunicación Mujer,” received by the Executive Secretariat on May 24, 2011, p. 3.

<sup>640</sup> Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 3.

were filed prior to November 2013,<sup>641</sup> and several writs of habeas corpus have been successful in releasing victims from involuntary internment.<sup>642</sup> However, there have also been reports of undue delays in releasing victims.<sup>643</sup> Further, in a 2013 case the CITN investigated one of the centers<sup>644</sup> and it was reported that the owner of the clinic was a public official working for the Ministry of Health.<sup>645</sup> According to the information received by the IACHR, the investigation finally concluded in February 2014. Three of the defendants—one of whom is reported to have fled the country in violation of court orders— were found guilty of hate crimes. All three were sentenced to ten days in prison and ordered to pay a fine.<sup>646</sup>

211. Since these “therapies” have no medical indication and represent a severe threat to the health and human rights of the affected persons, the IACHR recommends OAS Member States to adopt measures for the regulatory entity of the state health services to guarantee effective processes of regulation and oversight of doctors and health care professionals that offer these services. In general terms, practices that harm the physical, mental and social health should not be accepted as medical therapy. Further, the IACHR recommends that OAS Member States disseminate information based on scientific and objective evidence about the negative impact that these “therapies” have on health.
212. Finally, linked to the the attempts to change sexual orientation and gender identity, the Commission has been informed that sometimes attacks against LGBT persons are religiously motivated, particularly attacks targeting young gay men. For example, in Brazil, three men attacked a 19-year-old gay man. Two of the men punched the victim repeatedly while the third prayed for the victim to be saved from his “sins.” Then, one of the attackers then wrapped the victim’s arm in a cloth and set it on fire. The attackers allegedly abandoned the victim with a note in his pocket that read: “the fire of purification was set upon he who declared his bestial lover.”<sup>647</sup> In the United States, five members of an evangelical church were charged

<sup>641</sup> Asociación Silueta X, “Acceso a la Justicia y Derechos Humanos de los TILGB en Ecuador 2010-2013. Informe Complementario: Resultados del sondeo a medios de comunicación, fiscalía, comisaría y defensoría del pueblo,” November 2013, p. 10.

<sup>642</sup> Fundación Regional de Asesoría en Derechos Humanos “INREDH,” “Análisis del Habeas Corpus: caso de privación de la libertad en clínicas o centros terapéuticos de “deshomosexualización,” p. 2; Fundación Ecuatoriana Equidad, “Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador),” 2013, p. 40.

<sup>643</sup> Asociación Silueta X, “Acceso a la Justicia y Derechos Humanos de los TILGB en Ecuador 2010-2013,” November 2013, p. 86.

<sup>644</sup> Taller de Comunicación Mujer, “Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW),” 2014, p. 8.

<sup>645</sup> Fundación Ecuatoriana Equidad, “Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador),” 2013, p. 43; El Universo, “Comisaría implicada en un centro ilegal de rehabilitación,” July 20, 2013 (Available only in Spanish); Diario la Hora, “Clínica de caso Zulema es de una funcionaria de Salud, dice ministra Vance,” July 19, 2013 (Available only in Spanish); Diario El Telégrafo, “En 2012 el MSP registró 123 centros de rehabilitación legales en Ecuador,” July 19, 2013 (Available only in Spanish).

<sup>646</sup> Taller de Comunicación Mujer, “Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW),” 2014, p. 9.

<sup>647</sup> O Tempo, “Homossexual é agredido em ritual de ‘purificação de gays,’” September 20, 2014 (Available only in Portuguese); O Tempo, “Polícia investiga motivação religiosa em agressão a gay,” September 26, 2014 (Available only in Portuguese).

with the kidnapping and assault of a young gay man. According to available information, the victim stated that the attack “was meant to rid him of homosexual demons.”<sup>648</sup>

## H. Hate Speech and Incitement to Violence<sup>649</sup>

213. The Inter-American Commission has received information that indicates that violence against LGBTI persons in the region is fueled by the dissemination of “hate speech” targeted at this community in different contexts, including through public debate, manifestations against events organized by LGBTI persons, such as pride parades, the media and the internet. Although there is a need for further study this phenomenon, evidence shows that when crimes against LGBTI persons occur, they are frequently preceded by a context of heightened dehumanization and discrimination.
214. In a democratic society, States should protect freedom of expression while also guaranteeing equality and the safety of others.<sup>650</sup> In this complex task, States are called to, on the one hand, identify and adequately respond to these incidents, with a view to effectively guaranteeing the rights to personal integrity and security of LGBTI persons. On the other hand, all measures must be respectful of the right to freedom of expression, according to Article 13 of the American Convention. Similar to Article 13.1 of the American Convention, Article IV of the American Declaration establishes that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Unlike the American Convention, this provision does not include the conditions to be met by any restriction to this right. However, the Commission has historically interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, since this instrument was first adopted, and with due regard to other rules of international law applicable to members states.<sup>651</sup>
215. In recent years, several countries in the Americas have proposed legal initiatives to promote equality, sanction discrimination and prohibit “hate speech.” However, the IACHR has received information that in many cases these legislations do not meet the principle of legality. Some of the definitions are vague, which could

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<sup>648</sup> Daily News, *Indictment for 5 members of North Carolina’s Word of Faith Fellowship for alleged 2013 attack on gay man*, December 11, 2014.

<sup>649</sup> The Office of the Special Rapporteur on Freedom of Expression drafted this section of the Report.

<sup>650</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, October 5, 2012. Para. 2. See also, e.g.: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013. Par. 45; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 43; Article 19. Responding to Hate Speech against LGBTI People. October 2013; Article 19. The Camden Principles on Freedom of Expression and Equality. April 2009.

<sup>651</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* United States, July 21, 2011, para. 118.

compromise the effective enjoyment of the right to freedom of expression on issues of public interest. Hence, the growing need to ensure that measures adopted to discourage intolerance and respond to hate speech against LGBTI persons, are part of a policy aimed at promoting the right to freedom of expression of everyone, without discrimination.

216. In order to elaborate on these points, this section of the report provides an overview of the Inter-American legal framework concerning hate speech and incitement to violence. This section also identifies and analyses various non-legal measures and good practices that can contribute to prevent and counter hate speech. The overall goal of this section is to establish the basis for an understanding of the scope of hate speech and allow for the development and implementation of effective responses. This report primarily addresses the obligations of States, but additionally examines the significant role that media can play in the implementation of varied strategies to prevent and combat hate speech.

## 1. Freedom of expression and equality

217. Pursuant to the American Convention, all human beings are entitled to equal enjoyment and exercise of all rights, without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, birth, or any other social condition. As has been recognized by the Inter-American Court, the prohibition of discrimination due to sexual orientation should include, as protected rights, “the conduct associated with the expression of homosexuality.”<sup>652</sup> The Commission and the Office of the Special Rapporteur for Freedom of Expression are of the opinion that this rationale also applies to the expression of one’s gender identity. The IACHR’s Office of the Special Rapporteur for Freedom of Expression has stated that Article 13 of the American Convention encompasses the right to express one’s own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.<sup>653</sup>
218. The rights to equality and freedom of expression are “mutually supportive”<sup>654</sup> and have an “affirmative relationship,” as they make a “complementary and essential contribution to the securing and safeguarding of human dignity.”<sup>655</sup> In this regard, the Inter-American Commission and the Inter-American Court have systematically

<sup>652</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 139.

<sup>653</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 54-57; I/A Court H. R., *Case of López-Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 169.

<sup>654</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 3; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, para. 45.

<sup>655</sup> Article 19. *The Camden Principles on Freedom of Expression and Equality*. April 2009.

reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination.<sup>656</sup> This importance stems from the role of freedom of expression both in its own right and as an essential tool for the defense of all other rights, and as a core element of democracy.<sup>657</sup>

219. The right to freedom of expression is key in the redress by vulnerable groups of the balance of power among the components of society.<sup>658</sup> Further, this right is useful in promoting intercultural understanding and tolerance, deconstructing stereotypes, facilitating the free exchange of ideas, and offering alternative views and counterpoints.<sup>659</sup> Inequality results in the exclusion of certain voices from the democratic process, undermining values of pluralism and diversity of information. The individual members of the social groups that have been traditionally marginalized and discriminated against, or that are in a situation of helplessness, are systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions, or to be informed of the issues that affect them. This process of exclusion has simultaneously deprived the rest of society of knowledge of the interests, needs, and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.<sup>660</sup> When members of vulnerable or marginalized groups are excluded from public debate, “their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalization.”<sup>661</sup>

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<sup>656</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 1-4; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 50; IACHR, *Annual Report 1994*. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V.

<sup>657</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 6-10; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 112; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 82; I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116.

<sup>658</sup> United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

<sup>659</sup> United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

<sup>660</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 36.

<sup>661</sup> Article 19. [The Camden Principles on Freedom of Expression and Equality](#). April 2009, at “introductory statement.”

220. According to report examining the media in five countries in the Caribbean region, media outlets tend to completely ignore LGBTI persons and their specific issues in their coverage. When reported, matters related to LGBTI persons are frequently covered in a “sensationalized and demeaning” way. Further, according to the information received, in some of the countries included in that report, “the generalized ridicule of LGBTI persons,” in combination with threats and violence against LGBTI activists and supporters, leads to a limited pool of individuals willing to be publicly associated with promoting non-discrimination and an end to violence. According to this study, this results in the general public having a distorted view of LGBTI individuals and reinforces an erroneous belief that not many people are willing to publicly defend their rights. Moreover, the report concludes that this situation in turn “has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contributes directly to an environment that encourages discrimination and violence.”<sup>662</sup>
221. In light of the above, the Commission and the Office of the Special Rapporteur for Freedom of Expression reiterate that the promotion and protection of the right to freedom of expression should coincide with efforts to combat intolerance, discrimination, hate speech, and incitement to violence. Particularly, with the promotion of proactive public policies to ensure social inclusion in the media, as a means to guarantee that LGBTI persons and communities can exercise their right to freedom of expression, without discrimination. All these efforts should be in strict conformity with international human rights law in general, and freedom of expression standards in particular.

## 2. Definition of Hate Speech

222. While the Inter-American System of Human Rights has developed certain specific standards, there is no universally accepted definition of “hate speech” under international law. According to a recent UNESCO report that surveyed different definitions of hate speech in international law, the concept of hate speech usually refers to “expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks.”<sup>663</sup>

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<sup>662</sup> International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

<sup>663</sup> UNESCO, *Countering Online Hate Speech*. 2015, pp. 10 -11.

223. In its report UNESCO states that, notwithstanding the aforementioned, the concept of hate speech does not consist of broad and abstract ideas, such as political views and ideologies, faiths, or personal beliefs. Nor is it correct to automatically label as hate speech any insult or derogatory or inflammatory expression regarding an individual. When the concept is defined vaguely, the prohibition of hate speech can be easily manipulated to encompass expressions that are deemed offensive to others, particularly those in power, leading to misapplication of the law in attempts to curb dissenting and critical speech. Further, hate speech needs to be differentiated from “hate crimes” based on expressive conducts, such as threats and sexual harassment, which are outside of the protection of the right to freedom of expression.
224. A lack of clear definition of hate speech is also evident in terms of national legislation. In this regard, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed concern about the “continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices.”<sup>664</sup> These laws are characterized by vague and overbroad legal provisions prohibiting incitement to hatred, and are abused in order to censor discussions that are in the public interest.
225. As explained below, under the principles established under the inter-American human rights system, States are only *mandated to prohibit* hate speech in certain circumstances, this is, when the speech constitutes “incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin.” (Article 13(5) of the American Convention).
226. In other cases, even though the inter-American legal framework *allows* States to limit by legal measures the right to freedom of expression, under strict compliance with the requirements of legality, necessity and proportionality (Article 13(2) of the American Convention), the IACHR considers it necessary to highlight that censorship of the debate of controversial issues will not address structural inequalities and prejudice that affect LGBTI persons in the Americas. On the contrary, as a principle, instead of restricting, States must encourage more and richer debates as a means of exposing and addressing negative stereotypes.

### **3. Freedom of Expression and the prohibition of hate speech: Inter-American Law and Standards**

227. In principle, all forms of speech are protected by the right to freedom of expression, independently of the content and the degree of government and social acceptance of the speech in question. The State has a primary duty of content-neutrality and, as a consequence, it must guarantee that there are no persons,

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<sup>664</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 42.

groups, ideas or means of expression that are excluded *a priori* from public debate.<sup>665</sup> Particularly important is the rule according to which freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population. This is necessary to protect and foster the pluralism, tolerance and spirit of openness without which a truly democratic society cannot exist.<sup>666</sup>

228. Notwithstanding this strong protection of free speech, the right to freedom of expression is not an absolute right and can be subject to limitations. Such limitations are specifically established in Articles 13(2) and 13(5) of the American Convention. First, the American Convention establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights of other persons. Article 13(2) of the American Convention prohibits prior censorship, but allows for the subsequent imposition of liability. The establishment of such limitations must be exceptional in nature, and in order to be permissible must be subject to three basic conditions, also set forth in Article 13(2) of the American Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.
229. Further, Article 13(5) of the American Convention states that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the view that, according to general principles of treaty interpretation, “advocacy of hatred” that is directed against individuals on the basis of their sexual orientation, gender identity, or bodily diversity, and that constitutes incitement to lawless violence or “to any other similar action,” falls within the scope of this provision and is therefore a violation of Article 13 of the American Convention.<sup>667</sup>

<sup>665</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 36.

<sup>666</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 31; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 69; I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V.

<sup>667</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. IACHR, *Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report*, para. 238.

230. There is a distinction between Articles 13(2) and 13(5) of the American Convention. In interpreting Article 13(5) of the American Convention, the Commission has indicated that States *are required* to adopt legislation to punish advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action,”<sup>668</sup> while also noting the limits to these sanctions, as explained below. In contrast, as per Article 13(2) of the American Convention other intolerant expressions or comments that do not strictly amount to “incitement to violence,” *could* be subject to the imposition of subsequent liability to ensure the rights to dignity and non-discrimination of a particular group in society, including LGBTI persons. The International Covenant on Civil and Political Rights (ICCPR) provides a similar approach.<sup>669</sup> The United Nations “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (“UN Rabat Plan of Action”), adds a third type of speech that while not punishable, raises a concern in terms of tolerance and civility. As such the UN Rabat Plan of Action establishes that it is important for States to make a clear distinction between: (i) expressions that constitute a criminal offence, (ii) expressions that are not criminally punishable but may justify a civil suit or administrative sanctions, and (iii) expressions that are not legally punishable “but still rais[e] a concern in terms of tolerance, civility and respect for the rights of others.”<sup>670</sup>
231. In interpreting similar standards in the universal human rights system, the UN Special Rapporteur on minority issues, Rita Izsák, has expressed that “in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech. As experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate speech.”<sup>671</sup> Indeed, several United Nations human rights bodies<sup>672</sup> have highlighted that the application of criminal sanctions on hate

<sup>668</sup> IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 58.

<sup>669</sup> In the universal human rights system, “expression labelled as ‘hate speech’ can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) on different grounds, including respect for the rights of others, public order, or even sometimes national security. States are also obliged to ‘prohibit’ expression that amounts to ‘incitement’ to discrimination, hostility or violence” under article 20.2 of the ICCPR. *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para 14.

<sup>670</sup> United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 20, 25; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 32; *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 11.

<sup>671</sup> UN, Human Rights Council, *Report by the Special Rapporteur on Minority Issues, Rita Izsák, A/HRC/28/64*, January 5, 2015, para. 54.

<sup>672</sup> In 2011 and 2012, the United Nations Office of the High Commissioner for Human Rights (OHCHR) held four regional expert workshops focused on the relationship between freedom of expression and hate speech. The goal was to “conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for

speech should be seen as a last resort measure to be applied only in “strictly justifiable situations,” in accordance with the requirements set out in Article 20.2 of the ICCPR.<sup>673</sup>

232. To combat hate speech, experts have suggested that “civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and other remedies should also be considered, including those identified and put in force by various professional and regulatory bodies.”<sup>674</sup> The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the opinion that expressions that openly denigrate, stigmatize, or discriminate against a person or a group of persons on the grounds of perceived or actual sexual orientation or gender identity, but that do not reach the threshold of *advocacy of hatred that incites lawless violence* according to Article 13(5) of the American Convention (“hate speech”), *may be* subject to the imposition of subsequent sanctions of a civil or administrative nature, or to remedies such as the right of correction and reply. Notwithstanding this, the IACHR and its Office of the Special Rapporteur for Freedom of Expression highlight that such sanctions cannot be aimed at inhibiting or restricting the dissemination of information and ideas concerning issues of public interest. Further, as with any other restriction on freedom of expression, the imposition of subsequent sanctions must satisfy the requirements set forth in Article 13(2) of the American Convention and be applied by an independent state entity.
233. Negative or derogatory portrayal and other expressions that stigmatize LGBTI persons are certainly offensive and hurtful and they increase the marginalization, stigmatization, and general insecurity of LGBTI persons. However, the IACHR is of the opinion that the legal prohibition of this type of speech will not do away with the stigma, prejudice, and hatred against LGBTI persons that is deeply rooted in the societies of the Americas. In many contexts, given the structural social inequalities, discriminatory views and prejudice in public discourse cannot be eradicated through legal sanctions. As will be explained below, more should be done to promote a comprehensive approach that goes beyond legal measures and includes preventive and educational mechanisms and measures implemented by States, media, and society in general.

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freedom of expression as protected by international human rights law.” The workshops resulted in the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,” a document containing a series of recommendations to States, United Nations bodies and other stakeholders on implementing the prohibition of incitement to discrimination, hostility or violence contained in Article 20 of the International Covenant on Civil and Political Rights. The Rabat Plan of Action was subsequently supported and adapted by other international bodies in the fulfillment of their mandates.

<sup>673</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 20 - 22; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, para. 12.

<sup>674</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 14 - 19.

234. The Commission and its Office of the Special Rapporteur for Freedom of Expression deem of particular importance that States take action to guarantee the exercise of the right to freedom of expression of LGBTI persons and to empower those affected and made invisible by hate speech. As observed by the Office of the Special Rapporteur for Freedom of Expression, “speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less.”<sup>675</sup> However, in order to enable a vigorous debate it is necessary to guarantee that members of groups affected by hate speech can fully exercise their freedom of expression, which includes fostering greater diversity and pluralism in access to the media.<sup>676</sup>
235. In light of the foregoing, the Commission has stated that the imposition of sanctions under the charge of advocacy of hatred that constitutes “incitements to lawless violence or to any other similar action” – as defined and prohibited by Article 13(5) of the American Convention – requires a high threshold. Such sanctions must be backed by truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had: (a) the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons; and (b) the *capacity* to achieve this objective and create an *actual* risk of harm to LGBTI persons.<sup>677</sup>
236. Complementary requirements or “threshold tests” have been proposed by different international bodies and civil society organizations in order to clearly differentiate between speech that constitutes “incitement to lawless violence or to any other similar action,” allowing for the separation of speech warranting the imposition of criminal sanctions from speech that is intolerant or offensive.<sup>678</sup> For instance, the UN Rabat Plan of Action sets forth the following criteria that should be taken into account by legislators, prosecutors and judges when assessing expressions which are criminally prohibited: (i) the social and political context

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<sup>675</sup> IACHR, *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 50.

<sup>676</sup> IACHR, *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 50; IACHR, *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras. 24-37. IACHR, *Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II.134. Doc. 5. February 25, 2009. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression), para. 100.

<sup>677</sup> IACHR, *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

<sup>678</sup> See, e.g.: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 15 - 16; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 45; Article 19. *Responding to Hate Speech against LGBTI People*. October 2013, p. 27.

prevalent at the time the speech was made and disseminated;<sup>679</sup> (ii) the position or status of the speaker in the society, including the individual's or organization's standing in the context of the audience to whom the speech is directed; (iii) the intent of the speaker;<sup>680</sup> (iv) the content or form of the speech, which may include "the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed;" (v) the extent of the speech, including elements such as the reach of the speech, its public nature, magnitude and the size of its audience;<sup>681</sup> and (vi) the likelihood, including imminence, that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.<sup>682</sup>

237. It is important to recognize that any limit on freedom of expression, especially limits that could bring serious sanctions such as prison sentences, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch and that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must be accompanied by sanctions that are proportional. In any case, as has been repeatedly held by the Inter-American Commission and the Inter-American Court, any restriction imposed on the right to freedom of expression should be established in advance, expressly, restrictively, unambiguously and clearly in law – in the formal and material sense.<sup>683</sup> The restriction must also serve compelling

<sup>679</sup> "Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. Adopted on October 5, 2012, para. 22.

<sup>680</sup> "Negligence and recklessness are not sufficient for an article 20 situation which requires 'advocacy' and 'incitement' rather than mere distribution or circulation. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech as well as the audience." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

<sup>681</sup> "Further elements are whether the speech is public, what the means of dissemination are, considering whether the speech was disseminated through one single leaflet or through broadcasting in the mainstream media or internet, what was the frequency, the amount and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

<sup>682</sup> "Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless some degree of risk of resulting harm must be identified." *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 22.

<sup>683</sup> IACHR, *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 51; Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, paras. 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment dated November 22, 2005. Series C No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 117; IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of "Desacato" laws

objectives as set out in the American Convention, be necessary to serve the compelling objectives pursued in a democratic society, be strictly proportionate to the objective pursued, and be appropriate to serve said compelling objective.<sup>684</sup>

238. When limits on freedom of expression are established by criminal law, the Court has established that they must further satisfy the principle of strict legality. The Court has held that should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the principle of legality. The Court has indicated that this principle is understood as the requirement to use strict and unequivocal terms, clearly restricting any punishable behavior, which in turn requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”<sup>685</sup>
239. With regard to implementation of Article 20.2 of the ICCPR, the “Rabat Plan of Action” recommends that definitions of hate speech, especially of a criminal nature, incorporate robust definitions of key terms used, for example: hatred, incitement, and advocacy.<sup>686</sup> Similarly, the Camden Principles on Freedom of Expression and Equality, developed by a civil society organization on the basis of discussions involving a group of high-level UN and other officials, as well as civil society actors and academic experts, recommend that “[n]ational legal systems should make it clear, either explicitly or through authoritative interpretation, that: (i) The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; (ii) The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group; (iii) The term ‘incitement’ refers to statements about national, racial or [religious] groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.”<sup>687</sup>
240. The IACHR and its Office of the Special Rapporteur for Freedom of Expression believe that independent “watchdog” bodies can serve an important role in identifying and reporting hateful content and promoting the application of the

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with the American Convention on Human Rights. Title IV. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. *Report No. 11/96. Case No. 11.230. Francisco Martorell*. Chile. May 3, 1996, para. 55; IACHR, Arguments before the Inter-American Court in the case of Ricardo Canese v. Paraguay. Transcripts available at: InterAmerican Court, *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. a). Further, in this respect, the definition of the Inter-American Court in its Advisory Opinion OC-6/86 is applicable. It states that the term “laws” does not mean any legal provision, but rather general legal provisions established by the legislative body that is constitutionally provided for and democratically elected, according to the procedures established in the Constitution, hewing to the common good.

<sup>684</sup> IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 62 and ff.

<sup>685</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 55; IACHR. *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 73.

<sup>686</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, p. 14.

<sup>687</sup> Article 19. *The Camden Principles on Freedom of Expression and Equality*. April 2009.

highest ethical standards. While doing so, however, they must adhere to international human rights standards. Examples of non-punitive administrative remedies employed by independent “watchdog” bodies can be found in measures recently adopted by the Ombudsperson of the Audience of Broadcasting Services in Argentina [*Defensoría del Público de Servicios de Comunicación Audiovisual*] to promote the right to equality and non-discrimination on broadcasting services programming.<sup>688</sup> For instance, in December 2014 the Ombudsperson of the Audience recommended that a certain radio station adopt a code of ethics or style manual incorporating guidelines on the principle of non-discrimination that reflect progress made by national legislation in this regard. The Ombudsperson also mandated that its own legal department “process, prepare and distribute a guide on responsible press coverage of sexual diversity in the audiovisual media services.”<sup>689</sup>

241. Finally, the IACHR recognizes that other international and regional human rights instruments and treaties prohibit “promotion or incitement of hatred” with different implications for conceptualizing and defining the varied forms of hate speech. The IACHR notes the adoption in June 2013 of the Inter-American Convention against All Forms of Discrimination and Intolerance, which as of the date of release of the instant report is yet not in force<sup>690</sup>. Once this Convention enters into force, the Inter-American Commission and Court are called to, in accordance to international law principles, interpret the relationship between this Convention and the American Convention.

<sup>688</sup> According to Article 3(m) of the Act 26.522 of Audiovisual Communication Services, broadcasting media should “promote the protection and safeguarding of equality between men and women, and a plural, equal and non-stereotypical coverage, avoiding discrimination by gender or sexual orientation.” Congreso de la Nación Argentina. *Act 26.522. Servicios de Comunicación Audiovisual*, October 10, 2009.

<sup>689</sup> Ombudsperson of the Audience (Defensoría del Público). *Resolución N° 141/2014*. December 29, 2014.

<sup>690</sup> For example, Article 4 of the Inter-American Convention against All Forms of Discrimination and Intolerance establishes that “[t]he states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including: i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that: a. advocate, promote, or incite hatred, discrimination, and intolerance; b. condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts; [...] Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions, based on any of the criteria set forth in Article 1.1 of this Convention.” OAS General Assembly, *Inter-American Convention against all Forms of Discrimination and Intolerance*, adopted on June 5, 2013 at the 43<sup>rd</sup> Regular Session. Further, The International Convention on the Elimination of All Forms of Racial Discrimination obligates States to condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination” (art. 4). Further, three situations constitute offences punishable by law: (a) all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) organizations, organized and all other propaganda activities which promote and incite discrimination—which must be declared illegal and prohibited—, and participation in such organizations or activities; (c) promotion or incitement of racial discrimination by public authorities or public institutions, national or local. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly on December 21, 1965 (entered into force January 4, 1969).

## 4. Hate Speech and Public Officials

242. The Inter-American Court has established that even when official speech might not have authorized, instructed, or directly incited violence, it may often put potential victims of violence in a situation of greater vulnerability before the State and some sectors of society.<sup>691</sup> The Inter-American Commission and the Court have reiterated that given the State's obligations to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored.<sup>692</sup>
243. In this regard, the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding LGBTI persons.<sup>693</sup> For example, the IACHR received information regarding the use of expressions of stigmatization and intolerance by the President of the Human Rights Commission of the House of Representatives in Brazil in 2013. According to the information received, he has publicly indicated that LGBT people "want to impose a gay dictatorship in the country, in order to expel God out of Brazil" and that "the putrefaction of gay feelings leads to hate, crime and rejection."<sup>694</sup> Similarly, in 2013 the President of the Human Rights Commission of Congress, in Costa Rica, made a series of intolerant and discriminatory remarks regarding the congressional debate of a bill to protect LGBTI people from discrimination. He reportedly said to the press "[b]ut who is bothering them? Who is bothering them? We cannot tell who they are. If they are not 'fruity' and they do not declare themselves 'as such', in reality one does not know who they are."<sup>695</sup>

<sup>691</sup> I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 138; I/A Court H. R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157; IACHR, *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 208.

<sup>692</sup> I/A Court H. R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008 Series C No. 182. para. 131. See also (related): IACHR, *Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 204; I/A Court H. R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. vs. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 151; IACHR, *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149 Doc. 50. December 31, 2013, para. 44.

<sup>693</sup> IACHR, Press Release No. 37/13. *The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials*. May 17, 2013.

<sup>694</sup> FELGTB. "*La FELGTB denuncia la homofobia del presidente de la Comisión de Derechos Humanos de Brasil*". April 15, 2013 (Available in Spanish only); Tribuna da Bahia. "*Marco Feliciano põe o projeto sobre a "cura gay" para ser votado na Câmara*." May 2, 2013 (Available in Portuguese only).

<sup>695</sup> The original quote in Spanish: "*si a ellos no se les ve el plumero y no se declaran así, en realidad uno no sabe quiénes son*." Dos Manzanos. "*Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas*". March 4, 2013 (Available in Spanish only); El

244. In similar terms, a Councilman in La Candelaria, Bogotá, Colombia, indicated in 2013 that LGBT people “are involved with the judges and they are perverse or perverted .... [they] sleep with 5, 20 or 30 people. They sleep with children. They sleep with girls ... because the ones who are buying children are judges of the Republic, senators and magistrates. And we have a big problem. People run for office and they do not say whether or not they are LGBTI. Gay and bisexual men are being elected, but if the voters knew what kind of people [they are], they would not vote for them. But here, people are being lied to.”<sup>696</sup> Colombian civil society organizations have claimed that the Inspector General has also publicly expressed negative and demeaning views of LGBTI people. For example, the Inspector General considers same-sex relationships or couples to be “aberrations,” and equates them to bestiality.<sup>697</sup> Along these lines, on August 13, 2013, a Member of the House of Representatives for the Partido Socialista Unido de Venezuela (PSUV), used homophobic slurs while in a parliamentary session, when he referred to a State governor as “*maricón*” [Spanish equivalent to “faggot”] and a “homosexual.”<sup>698</sup>
245. Further, the Commission calls on authorities to not only refrain from disseminating hateful messages against LGBTI people but also to contribute decisively to the building of a climate of tolerance and respect in which all people, including LGBTI persons and those who defend their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.<sup>699</sup>
246. Likewise, the UN Special Rapporteur on Freedom of Expression has warned that when high-level officials engage in hate speech, “they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy.” Consequently, States should “take appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials.”<sup>700</sup>
247. In this regard, the UN Special Rapporteur on Freedom of Expression has noted that public officials have a special responsibility to clearly and formally denounce hate speech.<sup>701</sup> Similarly, the UN Rabat Plan of Action affirms the crucial role of political

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PeriodicoCR, “*Comentarios homofóbicos de diputado Orozco causan indignación en las redes sociales.*” February 22, 2013 (Available in Spanish only).

<sup>696</sup> El Espectador. “*Edil de Bogotá, en líos por posible discriminación.*” May 2, 2013 (Available in Spanish only).

<sup>697</sup> Colombia Diversa, “*Todos los Derechos, Pocos los Deberes,*” “*Situación de Derechos Humanos de Lesbianas, Gay, Bisexuales y Transgeneristas en Colombia 2008-2009,*” p. 11; citing Ordoñez, Maldonado Alejandro, *Ideología de Género: Utopía Trágica o Subversión Cultural.* 2006, pp. 108 and 153. This information has also been submitted by civil society organizations to the IACHR. IACHR, *Public Hearing Situation of Human Rights Defenders of Reproductive Rights in Colombia,* 147th Period of Sessions, March 14, 2013, video available in Spanish only at [www.iachr.org](http://www.iachr.org).

<sup>698</sup> Noticias24, *Pedro Carreño a Capriles: “Acepta el reto, mari...”* (video), August 13, 2013 (Available in Spanish only).

<sup>699</sup> IACHR. Press Release No. 37/13. *The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials.* May 17, 2013.

<sup>700</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357.* September 7, 2012, para. 67.

<sup>701</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357.* September 7, 2012, para. 64.

and religious leaders in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.<sup>702</sup> For its part, the UN Committee against Racial Discrimination has found that the formal rejection of hate speech by high-level public officials and the condemnation of hateful ideas expressed can work as a preventive measure to combat incitement to violence and discrimination.<sup>703</sup>

## 5. Non-legal measures to counter hate speech

248. The Commission and its Office of the Special Rapporteur for Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.<sup>704</sup> As previously stated by the Office of the Special Rapporteur on Freedom of Expression, these types of measures strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism and tolerance.<sup>705</sup>
249. In this context, preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice on the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.
250. Education and awareness-raising measures should include the promotion of digital and media “literacy”. The IACHR and its Office of the Special Rapporteur on Freedom of Expression have stated that in order to ensure access to the internet, educational measures intended to promote the training of all users in the autonomous, independent, and responsible use of the internet and digital technologies is needed. This is because “full access to information and communications technologies, particularly the Internet, is closely related to the

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<sup>702</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 24.

<sup>703</sup> United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 37 and 38.

<sup>704</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, para. 11; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. A/67/357. September 7, 2012, para. 33.

<sup>705</sup> IACHR. *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 48.

capacity to make effective use of these tools.”<sup>706</sup> The IACHR views as positive that in Argentina, the National Institute against Discrimination, Xenophobia and Racism (*INADI*, in Spanish) established the “Platform for an Internet Free of Discrimination.” The initiative aims to promote digital literacy among children, teenagers, and parents in order to guarantee that the Internet remains a space free from discriminatory violence that affects the rights of groups, communities, and individuals.<sup>707</sup> The Platform provides information to enable users to identify and report discriminatory language on the web. Civil society also plays a role in addressing hate speech against LGBTI persons, through education and awareness-raising efforts. In Canada, for example, the non-profit organization *Media Smarts* is dedicated to the promotion of media and digital “literacy”. It launched an initiative on diversity, non-discrimination, and hate online that provides practical tools for a diverse audience of Internet users, including parents, teachers, and children, for identifying and facing hate speech.<sup>708</sup>

251. A preventive policy should include the collection and analysis of data and information on hate speech. In most countries in the region, such data is not collected and analyzed. The goals of data collection and analysis could include the assessment of the various forms of hate speech; the perpetrators involved; the circumstances under which hate speech emerges; and the audiences reached or targeted. Other areas of assessment should include the impact of existing hate speech laws and the extent to which they comply with international norms, as well as the effects of counter-speech/counter-narrative techniques.<sup>709</sup>
252. Another important measure is the promotion of proactive public policies for social inclusion in the media to ensure that LGBTI individuals and communities can realize their right to freedom of expression without discrimination.<sup>710</sup> The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to “address and redress the indirect censorship, powerlessness and/or alienation felt by many groups and individuals,” especially those that have been frequent targets of severe harassment and intimidation by both State and non-State actors, since “explicitly or implicitly, through such actions an illusion is created that only those with the requisite authority can speak on particular issues,” resulting in a culture of fear that

<sup>706</sup> IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 48.

<sup>707</sup> National Institute against Discrimination, Xenophobia and Racism [*INADI*], “*Plataforma por una Internet Libre de Discriminación*”.

<sup>708</sup> For more information visit: [www.mediasmarts.com](http://www.mediasmarts.com).

<sup>709</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. October 5, 2012, paras. 23 to 29; UN, Committee on the Elimination of Racial Discrimination. General recommendation No. 35, *Combating racist hate speech*. CERD/C/GC/35. September 26, 2013, paras. 34-36; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. A/67/357. September 7, 2012, paras. 58-69.

<sup>710</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Universality and the Right to Freedom of Expression*. May 6, 2014.

hampers public debate and violates the right to freedom of expression.<sup>711</sup> Therefore, States should “proactively facilitate counter-speech of individuals belonging to groups that are systematically targeted by hate speech.”<sup>712</sup>

253. One example of good practice is the strengthening of the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community and promote awareness of LGBTI issues. Another example is the reservation of parts of the radio spectrum for community media outlets operated by LGBTI groups, together with the establishment of special procedures to assist those sectors in obtaining radio licenses. Efforts should also be made to provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and voice needs of LGBTI groups. These are examples of measures that are aimed toward generating equal opportunities and real equality in the exercise of the right to freedom of expression.<sup>713</sup>
254. It is important to emphasize the role of media as channels of information, ideas, and opinions. This role is fundamental to the development of narratives that value diversity and condemn arbitrary discrimination.<sup>714</sup> In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons.<sup>715</sup> The Office of the Special Rapporteur for Freedom of Expression has expressed concern over the promotion by media outlets of openly discriminatory content that could incite violence against LGBTI persons, especially when those messages come from shapers of public opinion.<sup>716</sup>
255. The IACHR welcomes a recent joint study by several civil society organizations monitoring media in five countries in the region (Belize, Grenada, Guyana, Jamaica

<sup>711</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 62.

<sup>712</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 62.

<sup>713</sup> IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras 37 and 96 et seq. IACHR. *Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, para. 155.

<sup>714</sup> IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 46.

<sup>715</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>716</sup> IACHR, *Annual Report 2014: Follow-up to the 2012 Jamaica Report*, para. 183. IACHR. *Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, para. 351; IACHR. *Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA /Ser.L/V/II.149 Doc. 50. December 31, 2013, paras. 560-563; IACHR. *Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. Similarly, see: United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 43.

and St. Lucia). According to this study, many media outlets reinforce negative stereotypes that can lead to violence against LGBTI persons, and overall, they create an “unbalanced, inaccurate and largely unflattering picture” of LGBTI persons. The study also found that stories depicting LGBTI persons engaged in positive activities, or important stories regarding policy issues or concerns about discrimination and exclusion, were largely ignored by the media.<sup>717</sup> Further, the study indicated that because much of the coverage consisted of depictions of LGBTI persons purportedly engaged in criminal activity, or negative depictions of LGBTI persons more generally, the coverage contributed to a heightened risk of violence against these persons.<sup>718</sup>

256. Coincidentally, the IACHR has expressed concern over the “systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community” in 2013 and 2014 in Jamaica.<sup>719</sup> For example, the IACHR noted<sup>720</sup> that on March 23, 2014, the *Jamaica Observer* newspaper reportedly published a cartoon indicating “the invasion of Jamaica by homosexuals” [*homos over run Jamaica*], which was alleged to be comparable to the increase in crime and government corruption.<sup>721</sup> On July 1, 2014, an article was published under the headline “Local churches vow to prevent homosexuality from dominating society,” which contained phrases such as “The local church community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society.”<sup>722</sup> On July 13, 2014, it published the article “Police hunt gay murder suspect,” which contained statements like “The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment,” and “Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community.”<sup>723</sup> On July 16, 2014, the same newspaper published an editorial entitled “Homosexuality: the long, painful search for workable rules of engagement,” apparently justifying that “[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination,” but also calling for tolerance and non-violence.<sup>724</sup>

<sup>717</sup> International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

<sup>718</sup> International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 2.

<sup>719</sup> IACHR, *Annual Report 2014: Follow-up to the 2012 Jamaica Report*, May 7, 2015, para. 236.

<sup>720</sup> IACHR, *Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere)*, OEA/Ser.L/V/II.Doc. 13, March 9, 2015, para. 657.

<sup>721</sup> Maurice Tomlinson. March 23, 2014. *More Anti-gay material from the Jamaica Observer*. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>722</sup> Jamaica Observer. *Local churches vow to prevent homosexuality from dominating society*. July 1, 2014.

<sup>723</sup> Jamaica Observer. *Police hunt gay murder suspect*. July 13, 2014.

<sup>724</sup> Jamaica Observer. *Homosexuality: the long, painful search for workable rules of engagement*. July 16, 2014.

257. In its 2014 Report to follow-up to the 2012 Report on the human rights situation in Jamaica,<sup>725</sup> the IACHR indicated that in the framework of the hearing "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica" held on October, 28, 2014, the Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression received information on the constant stigmatizing and hate speech reproduced by the media regarding LGBTI persons. According to civil society organizations, State authorities have omitted promoting positive views to reduce the discrimination and stigma against LGBTI persons. The State reported that the government is aware of the debate in Jamaica on the rights of LGBTI persons and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State indicated that takes the position that these are issues covered by the right to freedom of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government's control.<sup>726</sup> The Office of the Special Rapporteur for Freedom of Expression of the IACHR has warned that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.<sup>727</sup>
258. The Commission recalls that principle 6 of the Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State. The IACHR notes that the adoption of voluntary professional codes of conduct for the media and journalists can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of media outlets furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.<sup>728</sup> Similarly, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that "media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism".<sup>729</sup> Further, that media outlets and journalists should establish "independent and self-regulatory bodies to elevate standards of journalism and to ensure the accountability of all media professionals."<sup>730</sup>

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<sup>725</sup> IACHR, *Annual Report 2014: Follow-up to the 2012 Jamaica Report*, para. 237.

<sup>726</sup> IACHR, *Public Hearing on "Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,"* 153<sup>rd</sup> Regular Sessions, October 28, 2014.

<sup>727</sup> In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. *Cross-dressing teenager murdered in Jamaica*; Huffington Post/AP. August 11, 2013. *Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report*. IACHR, *Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report*, para. 237.

<sup>728</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014. See also: *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. Adopted on October 5, 2012. Recommendations to other stakeholders.

<sup>729</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 74.

<sup>730</sup> United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357*. September 7, 2012, para. 74.

259. Indeed, media should play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have suffer from historical discrimination (including LGBTI persons), and by giving members of these groups an opportunity to speak and to be heard.<sup>731</sup> This is consistent with the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, which recommend that “mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues.”<sup>732</sup>
260. In sum, in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, stigmatizing, or offensive speech. Further, States should adopt legislation prohibiting any advocacy of hatred that constitutes incitement to violence or other similar action. The imposition of sanctions under the charge of advocacy of hatred – as defined in and prohibited by Article 13(5) of the American Convention – requires a high threshold. This is because, as a matter of fundamental principle, prohibition of speech must remain an exception. Restrictions on speech must be backed by actual, truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons, along with the *capacity* of achieving this objective and creating an *actual* risk of harm being committed against persons who are part of these groups. These elements should be made clear by national legal systems, either explicitly in the law or through authoritative interpretation by the judiciary. In other words, criminal sanctions should be seen as last resort measures, only to be applied in strictly justifiable situations, according to Article 13(5) of the American Convention. Civil and administrative sanctions and remedies should also be considered, along with the right of correction and the right of reply.
261. Further, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy. Consequently, States should adopt appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials. The media also plays an important role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by adopting voluntary professional codes of conduct.

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<sup>731</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Universality and the Right to Freedom of Expression*, May 6, 2014.

<sup>732</sup> *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, p. 36. March 2007.



CHAPTER 5  
VIOLENCE AND INTERSECTION  
WITH OTHER GROUPS



## VIOLENCE AND INTERSECTION WITH OTHER GROUPS

262. The experiences of lesbian, gay, bisexual, trans and intersex persons of violence are very diverse. This diversity is a result of differing personal circumstances and characteristics, and in particular, the existence of certain factors that make LGBTI persons especially vulnerable to violence, or which worsen the consequences of such violence. For example, an afrodescendant trans woman who is internally displaced in a rural area and who lives in poverty would experience violence or its consequences differently from a wealthy Caucasian gay man who lives in a major city.<sup>733</sup> In this chapter the IACHR summarizes some of the issues faced by persons at the intersectionality of their sexual orientation and gender identity and their ethnicity; sex; gender; migration status; age; status as a human rights defender; race; and socio-economic status. Since the focus of this Report is violence, it does not address discrimination at the intersections of these factors in general. However, it is important to note the interrelation between violence and discrimination, and how the acts of violence described in this section reflect a manifestation of underlying structural and historical forms of discrimination. These groups can suffer from a continuous cycle of violence and discrimination caused by impunity and a lack of access to justice. The IACHR acknowledges that there are other factors not addressed in this chapter that might make LGBTI persons more susceptible to violence and discrimination, such as disability, age (being elderly), being a parent, living in rural areas, and living with HIV.

### A. *Indigenous peoples*

263. The IACHR has received limited information on the human rights situation of indigenous persons with diverse sexualities. The IACHR notes that such persons might not self-identify as LGBT, and instead might self-identify with another expression of diverse sexuality, for example Two-Spirit, or might not discuss their gender or sexual orientation in terms that easily translate to the concept of LGBT

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<sup>733</sup> See e.g. Luke Boso, *Urban Bias, Rural Sexual Minorities and Courts' Role in Addressing Discrimination* UCLA L. Rev. 60 (2012): 562.

as used in this Report.<sup>734</sup> During a public hearing held in March 2013, a group of experts presented information on the negative impact of colonization on the ancestral sexualities and spiritualities of indigenous peoples.<sup>735</sup> Indigenous organizations explain that when Europeans landed in America, they imposed their conceptions of the world and religion onto the native and indigenous peoples who lived there. Among those conceptions were European views on nudity, virginity, polygamy, and, above all, same-gender relationships and trans identities.<sup>736</sup> According to the information provided, colonization resulted in the suppression of non-heteronormative sexualities among indigenous peoples. This had devastating consequences, including loss of acceptance of people of non-heteronormative sexualities within their own societies, self-harm, and suicide.<sup>737</sup>

264. Canadian civil society organizations have informed the Commission of the many challenges faced by Two-Spirit Canadians. In Canada, First Nations and Aboriginal Canadians who identify as Two-Spirit or LGBT face unacceptably high levels of violence and discrimination. A report recently produced by the National Aboriginal Health Organization (NAHO) indicated that LGBT and Two-Spirit Aboriginal youth are two times more likely to face assault than heterosexual Aboriginal youth. Facing homophobia, transphobia and violence in their communities, LGBT and two-spirited Aboriginal youth often have no supports or safeguards. This can lead to alcoholism, drug abuse, sex work and in some cases, suicide.<sup>738</sup>
265. The Commission underscores that indigenous persons with non-conforming sexual identities suffer from multiple and intersecting forms of violence and discrimination due to their indigenous identity and sexuality, sexual orientation and/or gender identity. The Commission notes how both the American Convention and the American Declaration protect the right of every person to be free from all forms of discrimination,<sup>739</sup> and that indigenous peoples in particular are protected from discrimination based on their ethnic background, race, national origin, traditions and customs.<sup>740</sup> The right of indigenous peoples to live free from all forms of discrimination is further protected under the universal system of human rights.<sup>741</sup>

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<sup>734</sup> IACHR, *Public Hearing on Situation of Human Rights of Lesbian, Gay, Transexual, Bisexual and Intersex Indigenous Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 16, 2013. Audio and video available at [www.iachr.org](http://www.iachr.org).

<sup>735</sup> IACHR, Press Release No. 23/A, *Annex to the Press Release Issued at the Close of the 147th Session*, April 5, 2013.

<sup>736</sup> Fundación Diversencia, *"Situación de Derechos Humanos de las Personas LGBTI y Diversidades Ancestrales en el contexto de los Pueblos Indígenas en Abya Yala"*, 2013, p. 4.

<sup>737</sup> IACHR, Press Release No. 23/13A, *Annex to the Press Release Issued at the Close of the 147th Session*, April 5, 2013.

<sup>738</sup> National Aboriginal Health Organization, *Suicide Prevention and Two Spirited People*, [n.d.].

<sup>739</sup> American Convention on Human Rights, November 11, 1969, Articles 1(1) and 24; American Declaration on the Rights and Duties of Man, 1948, Article II.

<sup>740</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo district* (Belize), October 12, 2004, paras. 162-169; I/A Court H.R., *Case of Inés Fernández Ortega v. Mexico, Preliminary Objection, Merits, Reparations, and Costs*, Judgment of August 30, 2010, para. 200; I/A Court H.R., *Case of Valentina Rosendo Cantú v. Mexico, Preliminary Objection, Merits, Reparations, and Costs*, Judgment of August 31, 2010, paras. 169-170.

<sup>741</sup> International Covenant on Civil and Political Rights, December 16, 1966, Articles 2(1) and 3; Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Articles 1, 2, and 3; Convention on the

266. In this respect, the Commission considers it important to note the unique way in which indigenous persons with non-normative sexual orientations and gender identities experience the violence described above. Each indigenous community views themselves as a collective unit in which each individual views their independent spiritual and cultural survival as dependent on their continued connection with the collective identity of the community and its ancestral lands.<sup>742</sup> The loss of that connection—whether it be through rejection by the collective community or exile from their ancestral lands—can constitute a form of spiritual and cultural violence for those indigenous persons with non-normative sexual orientations and gender identities, with the loss of identity and support leading in some cases to the incidents of suicide and self-harm described above.<sup>743</sup>
267. Bearing this in mind, the Commission emphasizes the need for a holistic approach to address both the acts of violence as well as the underlying historical and structural causes of the violence within and outside of the indigenous communities. As part of this holistic approach, the Commission considers it important for States to conduct full, timely and impartial investigations of complaints of violence with an intercultural perspective to take into account the specific needs of indigenous persons with non-conforming gender identities. The IACHR calls on OAS Member States to include in their legislation and public policies the specific needs of indigenous peoples with diverse sexualities, and to adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexualities or gender identities. In order to evaluate the effectiveness of the measures implemented in this respect and to formulate any needed policy changes, States should collect and disseminate disaggregated statistics and information on cases of violence against these people.

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Elimination of All Forms of Racial Discrimination, January 4, 1965, Articles 1 and 2; ILO Convention 169 on Indigenous and Tribal Peoples, January 1, 1989, Articles 3, 4 and 20; and the UN Declaration on the Rights of Indigenous Peoples, June 20, 2006, Article 2.

<sup>742</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., Doc. 30/14, December 21, 2014, para. 117; IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., Doc. 56/09, December 30, 2009, paras. 24-31, 37. I/A Court, *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, series C, No. 79, para. 148: "(...) The indigenous by virtue of their existence have the right to live freely in their own land; the close relationship that the indigenous maintain with the land must be recognized and understood as a fundamental basis for their culture, spiritual life, their integrity and their economic survival. For indigenous communities the relationship with the land is not merely a question of possession and production but also a material and spiritual element for which they must fully enjoy, including to preserve their cultural heritage and to transmit it to future generations."

<sup>743</sup> IACHR, Public Hearing on *Situation of Human Rights of Lesbian, Gay, Transexual, Bisexual and Intersex Indigenous Persons in the Americas*, 147<sup>th</sup> Period of Sessions, March 16, 2013. Audio and video available at [www.iachr.org](http://www.iachr.org). See also, Annex report on *Human Rights Situation of LGBTI Persons and Ancestral Diversity in the context of Indigenous Peoples in Abya Yala* ["*Situación de Derechos Humanos de las Personas LGBTI y Diversidades Ancestrales en el context de los Pueblos Indígenas en Abya Yala*"], presented by the organizations to the IACHR in the context of this hearing.

## B. Women

268. Under several international human rights instruments, including UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence against Women, and the Convention of Belém do Pará, States have a duty to respond to all forms of violence against women and girls with due diligence. This duty extends to protection, prevention, investigation, prosecution, punishment and provision of effective remedies, including reparations. In carrying out this duty, States must consider the varying needs of different groups of women, taking into account age, race, ethnicity, disability, sexual orientation, gender identity, and socio-economic position, among other factors.<sup>744</sup>
269. The IACHR has stated that in the case of crimes involving violence against women, States have obligations under the Convention of Belém do Pará that are in addition to, and that reinforce, the obligations contained in the American Convention and the American Declaration.<sup>745</sup> Given the lack of visibility, the Commission has called for states to give attention to the principles and obligations contained in the Convention of Belém do Pará when addressing violence against lesbian women.<sup>746</sup> The IACHR has also included reference to trans and lesbian women in press releases commemorating dates that have traditionally been conceptualized in terms of cisgender and heterosexual women, such as International Women’s Day (March 8, 2015)<sup>747</sup> and the International Day for the Elimination of Violence against Women (November 25, 2014).<sup>748</sup> In a 2015 joint visit to four countries in the Caribbean by the UN Special Rapporteur on Violence against Women and Tracy Robinson in her capacity as Rapporteur on the Rights of Women of the IACHR, the rapporteurs noted that “human rights issues affecting lesbian, bisexual and trans women were referred to continuously in meetings, including practices described as “corrective” violence.”<sup>749</sup> Further, in interpreting the concept of violence “that occurs in the community,” which appears in Article 2(b) of the Convention of Belém do Pará, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), has established that “one expression of violence at the level of the

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<sup>744</sup> IACHR, *Joint Press Release by UN and IACHR Rapporteurs*, April 28, 2015. See also CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, October 2010, CEDAW/C/2010/47/GC.2, para. 18. See also, Article 9 of the Convention of Belém do Pará. The IACHR has stated that in the case of crimes involving violence against women, in addition to the obligations contained in the American Convention, the States have an obligation under the Convention of *Belém do Pará*.

<sup>745</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 47.

<sup>746</sup> In connection to this, see IACHR, Press Release No. 23A/13, “Annex to the Press Release issued at the close of the 147<sup>th</sup> Session,” April 5, 2013.

<sup>747</sup> IACHR, Press Release No. 24/15, “On International Women’s Day, IACHR urges States to Guarantee Women’s Sexual and Reproductive Rights,” March 6, 2015.

<sup>748</sup> IACHR, Press Release No. 140/14, On the International Day for the Elimination of Violence against Women, IACHR Urges States to Implement Transformative Measures, November 25, 2014.

<sup>749</sup> IACHR, Press Release No. 41/15 “Joint Press Release by UN and IACHR Rapporteurs,” April 28, 2015.

community is the generalized discrimination and violence directed against women as a result of their sexual orientation or gender identity.”<sup>750</sup>

270. The Commission considers it important to highlight the multidimensional nature of the acts of violence described in this section. Acts of violence against women, including lesbian, bisexual and trans women, are experienced by women as manifestations of the structural and historical sexism and inequality between men and women. As a result, the Commission notes how acts of violence against women can often take gender-specific forms, such as sexual violence or intrafamily violence. When examining the intersection of gender with sexuality, sexual orientation and/or gender identity, the Commission has found that such acts of violence are manifestations of the combined structural and historical sexism and prejudice towards non-normative sexual orientations and gender identities and, therefore, can take specific forms, such as rape aimed at punishing those orientations or identities, the puncturing of silicone implants, and genital mutilation, among others.
271. The Commission also finds that the context in which such acts of violence occur can also impact the way in which women experience certain acts of violence. In particular, the Commission has found that acts of rape perpetrated by agents of the State, while the women were under the control of those agents, constitute torture under the American Convention and the Inter-American Convention to Prevent and Punish Torture.<sup>751</sup> Such a finding is based, in part, on the shared objective of rape and torture to intimidate, degrade, humiliate, punish and control the victim, as well as the power imbalance between agents of the State and the women victims of violence.
272. Lesbian women are at particular risk for violence because of misogyny and gender inequality in society,<sup>752</sup> but there is significant underreporting of violence against lesbian women.<sup>753</sup> This may be because many forms of violence experienced by lesbian women occur in private and are intersectional forms of violence. Of the 770 acts of violence against LGBT persons registered by the IACHR between January 2013 and March 2014 (lethal and non-lethal), 55 of those acts targeted lesbian women, or women perceived to be lesbians.<sup>754</sup> In this regard, the Commission highlights that this low number is due to the invisibility and under-reporting

<sup>750</sup> Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, 2014, p. 22.

<sup>751</sup> See, e.g. *IACHR, Application before the I/A Court, Case of Ines Fernandez Ortega*, Case 12,580 v. Mexico, May 7, 2009; and *IACHR, Application before the I/A Court, Case of Valentina Rosendo Cantu et al.*, Case No. 12,579 v. Mexico, August 2, 2009.

<sup>752</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 22.

<sup>753</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014. See also Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), “Monitoreo sobre violencia sexual en conflicto armado en Colombia, El Salvador, Guatemala, Honduras, Nicaragua y Perú”, 2007, p. 326.

<sup>754</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

regarding acts of violence against women, as well as the fact that most of these acts of violence occur in private settings. The IACHR has noted that lesbian women are a group largely absent from the legislation and policies adopted by States.<sup>755</sup> As was examined in the previous chapter, according to data collected by the IACHR, lesbian women are victims of rape or sexual violence targeted to punish them because of their sexual orientation; collective beatings for public display of affection; attacks with acid; and forcible commitment to centers that offer to “modify” their sexual orientation.<sup>756</sup>

273. According to information gathered by the IACHR, lesbian women are “disproportionately affected by violence exerted by their family members.”<sup>757</sup> For example, in Ecuador a man shot his wife in her back and neck, saying that he did this because he thought she was a lesbian. The woman survived but was left permanently disabled and in charge of her five children.<sup>758</sup> In Chile, a young lesbian woman was repeatedly physically attacked and stabbed by the male relatives of her ex-girlfriend.<sup>759</sup> In Peru, a woman tried to defend her girlfriend from an attack by her brother that was prompted by their same-sex relationship. As a result she suffered machete wounds on her face, head and neck.<sup>760</sup> According to the organization that provided her legal representation, she received discriminatory treatment at the hands of a state forensics officer (*medicina legal*), including repeated abusive questioning about her sex life and the statement that because she was “butch,” her son would be a “faggot.”<sup>761</sup> Lesbian women are also punished for rejecting men’s sexual advances.<sup>762</sup>
274. The IACHR has received troubling information on the high levels of violence experienced by bisexual women, when compared to both lesbian and heterosexual women. According to data from the 2010 U.S. National Intimate Partner and Sexual Violence Survey (NISVS) that concerns rape and other sexual violence committed by any perpetrator (which can be an intimate partner, acquaintance, family member, stranger, or person of authority), bisexual women suffer a significantly

<sup>755</sup> IACHR, Press Release No. 23A/2013, *Annex to the Press Release issue at the Close of the 147<sup>th</sup> Session*, April 5, 2013.

<sup>756</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153. December 17, 2014.

<sup>757</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>758</sup> El Diario, “*Marido le disparó tras acusarla de ser lesbiana*,” February 28, 2013 (Available only in Spanish).

<sup>759</sup> OTD Organización de Transexuales por la Dignidad de la Diversidad (OTD) & International Gay and Lesbian Human Rights Commission (IGLHRC), “*Violaciones de derechos humanos de las personas lesbianas, bisexuales y transexuales (LBT): Un informe sombra*”, September 2012, p. 8; EMOL, “*PDI detiene a supuestos implicados en brutal golpiza a joven lesbiana*,” July 20, 2012 (Available only in Spanish); Biobio Chile, “*Joven de 16 años sufrió brutal agresión en Santa Juana: Acusan discriminación por ser lesbiana*,” July 19, 2012 (Available only in Spanish).

<sup>760</sup> Promsex, “*Mujer lesbiana, agredida brutalmente por hermano de su pareja por homofobia, requiere solidaridad por parte de todos los peruanos*,” April 1, 2014 (Available only in Spanish).

<sup>761</sup> Sinetiquetas, “*Pilar tenía que vivir y la voz de su hijo fue lo último que escuchó*,” May 5, 2015 (Available only in Spanish).

<sup>762</sup> Cba24n, “*Activistas lesbianas fueron atacadas por una patota en beep*,” March, 3, 2014 (Available only in Spanish).

higher lifetime prevalence of such violence when compared to both lesbian and heterosexual women.<sup>763</sup> It was reported that 61.1% of bisexual women had, at least one time in their lives, been victims of rape, physical violence and/or stalking by an intimate partner, compared to 43.8% for lesbians and 35% for heterosexual women.<sup>764</sup>

275. Since the beginning of the establishment of the LGBTI Unit at the IACHR, the Inter-American Commission has monitored and expressed concern about violence against trans persons in the Americas.<sup>765</sup> Numerous studies and reports by international agencies,<sup>766</sup> civil society organizations,<sup>767</sup> state authorities,<sup>768</sup> activists,<sup>769</sup> and academia,<sup>770</sup> have focused on how pervasive violence, prejudice and discrimination in society at large and within the family hinder trans women's possibilities to access education, health care services, shelter, and the formal labor market. In turn, homelessness and exclusion from education and the formal labor market makes trans women more susceptible to be subjected to diverse forms of violence. Violence against trans persons, particularly trans women, is the result of a combination of factors: exclusion, discrimination and violence within the family, schools, and society at large; lack of recognition of their gender identity;

<sup>763</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.

<sup>764</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.

<sup>765</sup> To access the IACHR's press releases and chapters of annual, country and thematic reports on the subject, visit [www.iachr.org](http://www.iachr.org) (Rapporteurship on the Rights of LGBTI persons).

<sup>766</sup> UNAIDS, *Transgender People in The Gap Report*, September 2014, p. 3; United Nations Development Programme (UNDP), *Discussion Paper: Transgender Health and Human Rights*, December 2013, p. 17; UNDP, *Informe sobre Desarrollo Humano El Salvador 2013*, 2013, p. 198.

<sup>767</sup> See e.g., [Bolivia] International Gay and Lesbian Human Rights Commission (IGLHRC), "*Situación de las mujeres lesbianas, bisexuales, transexuales, transgénero e intersex en Bolivia en relación a la discriminación: Informe Sombra (CEDAW)*", 2007, pp. 13-14; [Costa Rica] Mulabi & International Gay and Lesbian Human Rights Commission (IGLHRC), *Situation of lesbian, bisexual, transsexual, transgender and intersex women in Costa Rica in regards to discrimination: Shadow Report*, July 2011, p. 4; [Dominican Republic] Human Rights Observatory for Vulnerable Groups et. al, *Discrimination and violence towards Transgender women in the Dominican Republic*, 27 October 2014, p. 3. [Peru] PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2010*, 2011, p. 58; [Regional] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 25-27; Ignacio Gabriel Ulises Borgogno, "*La transfobia en America Latina y el Caribe: un Estudio en el Marco de REDLACTRANS*," (no date), p. 41; International Gay and Lesbian Human Rights Commission (IGLHRC), *Latin American Trans Women Living in Extreme Poverty*, June 2009, p. 6; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TvT), *Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans*, 2012, pp. 46-49.

<sup>768</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated 29 November 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 6. See also, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo, INADI (Argentina), "*Hacia una Ley de Identidad de Género*," 2012, pp. 7, 21.

<sup>769</sup> Lohana Berkins, "*Travestis: una identidad política*" in "*Pensando los feminismos en Bolivia*", Conexión Fondo de Emancipación, 2012, p. 224.

<sup>770</sup> See among others: Lilián Abracinskas, "*Relevamiento de necesidades de salud de personas trans en Uruguay*." Sent to the IACHR by the State of Uruguay as an annex to the response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas, Note 0141/2013, received by IACHR Executive Secretariat on December 20, 2013; Baral, SD, Beyrer, C., & Poteat, T., (2011), *Human Rights, the Law, and HIV among Transgender People*. Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, July 7-9, 2011, p. 4-6.

involvement in occupations that puts them at a higher risk for violence; and high criminalization.<sup>771</sup>

276. Some Latin American organizations report that the average life expectancy of trans women in the region is as low as 35 years of age, or even less.<sup>772</sup> In this regard, the IACHR has noted that while it seems that gay men of all ages are targeted, in the case of trans women, it is mostly younger trans women who are victims of violence. The IACHR has expressed concern about the young age of trans victims of killings and other acts of violence. According to the data collected, 80% of trans persons killed were 35 years of age or younger.<sup>773</sup>
277. The IACHR has received reports of certain specific acts of violence that are present in many cases of attacks against trans women. These include: beatings targeted at the breasts; the puncturing of silicone breast implants; and genital mutilation, including even post-mortem castration.<sup>774</sup> There have also been reports of trans women being killed after the perpetrator found out they were trans.<sup>775</sup>

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<sup>771</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>772</sup> Exact figures vary according to sources and countries. See, among others: IACHR, Hearing on *Trans Persons' Right to Identity*, 144<sup>th</sup> Period of Sessions, March 23, 2012; IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 25-25, 2012; REDLACTRANS, *La Transfobia en América Latina y el Caribe*, 2009, p. 63; [Argentina] Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), *Políticas inclusivas para el colectivo trans*, 2013; [Guatemala] Organización Trans Reinas de la Noche, REDLACTRANS, IGLHRC, Heartland Alliance and The George Washington University Law School International Human Rights Clinic, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Guatemala: A Shadow Report*, March 2012, p. 16; [Uruguay] Ministerio de Desarrollo Social, *Políticas públicas y diversidad sexual: Análisis de la heteronormatividad en la vida de las personas y las instituciones. Informe final*, June 2013, p. 135. In a 2005 study conducted in Argentina analyzing the death of 420 trans persons (*travestis*), 70% of them were between 22 and 41 years of age at the time of their death. Berkins, Lohana, "*Travestis: una identidad política*" in *Pensando los feminismos en Bolivia*, Conexión Fondo de Emancipación, 2012, p. 224.

<sup>773</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>774</sup> See e.g., IACHR, Public Hearing on *Human Rights Situation of Trans Persons of African Descent in Brazil*, 149<sup>th</sup> Period of Sessions, October 29, 2013; IACHR, Public Hearing on *Discrimination on the base of Gender, Race and Sexual Orientation in the Americas*, 133<sup>rd</sup> Period of Sessions, October 23, 2008; Global Rights, *Report on the Human Rights Situation of Afro-Brazilian Trans Women*, 2013, p. 13; Grupo Gay da Bahía (GGB), "*Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014*," p. 3; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TVT), "*Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans*," 2012, p. 47; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 18.

<sup>775</sup> For example, Diamond Williams, an African American transgender woman, was killed in July 2013 in Philadelphia, United States, allegedly after her attacker found out that she was trans. Her body was dismembered and found scattered across the city. NBC, *Loved ones celebrate life of slain transgender woman*, July 23, 2013. Further, the IACHR received information about the death of Cristóforo F., a trans person who was allegedly asphyxiated in Mexico City on September 6, 2013 (IACHR, *Registry of Violence, of murders and other acts of severe violence against LGBT persons (January 2013 to March 2014)*, (in Spanish only). See also Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact in Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 30.

278. Trans women are often attacked or killed by armed groups, including armed groups performing neighborhood security duties, as well as illegal groups such as gangs. For example, in 2009, in Peru, a trans woman sex worker named Techi Paredes was shaved bald and told to jump like a frog while being beaten with clubs by members of neighborhood councils. It was reported that one of the neighbors leading the attack declared: “[w]e are giving them exemplary punishment and we are determined to eradicate them.”<sup>776</sup> Also in 2009, a group of residents in a neighborhood of the City of Buenos Aires, Argentina, is reported to have distributed flyers advocating the “elimination” of trans women from the neighborhood. This group referred to themselves as “an anonymous group who decided to go to war with these men dressed as women.” Trans women in the area reported suffering attacks with eggs, stones and bottles.<sup>777</sup> In Guatemala there are local security groups known as *Juntas Locales de Seguridad*, who are believed to have been involved in the killings of three trans women in July 2011.<sup>778</sup>
279. The IACHR has also received information that LGBT persons, particularly trans women, are more vulnerable to violence by illegal armed groups and organized crime in Central America.<sup>779</sup> A regional organization reports that violence inflicted on trans women by *maras* and gangs in Guatemala, Honduras and El Salvador is particularly serious.<sup>780</sup> Regarding El Salvador, the IACHR indicated in June 2015 that “[i]n the context of countries with high levels of insecurity and organized crime, it is particularly important for States to adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI persons and defenders of human rights of LGBTI persons, who, as informed, are particularly vulnerable to violence by armed groups.”<sup>781</sup> The IACHR has also extensively documented violence by armed groups against trans women in Colombia, particularly those living outside of Bogota, in areas affected by the armed conflict.<sup>782</sup>
280. The IACHR has received consistent reports showing that trans women who are sex workers are particularly vulnerable to community violence, including killings by

<sup>776</sup> Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), “Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2009”, 2010, pp. 57, 58, 98; International Gay and Lesbian Human Rights Commission (IGLHRC), *Latin American Trans Women Living in Extreme Poverty*, June 2009, p. 8; Amnesty International, “Pérou. Craintes Pour La Sécurité,” AMR 46/004/2009, February 27, 2009 (Available only in French).

<sup>777</sup> Clarín, “*Villa Luro: un grupo de vecinos, en pie de guerra contra travestis.*” March 28, 2009 (Available only in Spanish); Página 12, “*Un arma habla más que mil palabras.*” March 26, 2009 (Available only in Spanish); Infobae, “*Un volante llama a “echar a tiros” a los travestis de Villa Luro.*” March 26, 2009 (Available only in Spanish).

<sup>778</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 26.

<sup>779</sup> IACHR, *Public Hearing on Forced Migration and Persecution of LGBT Defenders in Central America*. 154<sup>th</sup> Period of Sessions, March 17, 2015. Audio and video available at [www.iachr.org](http://www.iachr.org).

<sup>780</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 26.

<sup>781</sup> IACHR, Press release No. 063/15, *IACHR Condemns Killing of Human Rights Defender of Trans Persons in El Salvador*, June 8, 2015. .

<sup>782</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013. See also, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/1999/39, January 6, 1999, para. 76 (making reference to information received also concerning Mexico and Brazil).

groups, or even their own clients. Due to discrimination in the labor market and other adverse impacts, sex work is for many trans women a means for survival, with some even engaging in sex work in their early teens. One estimate indicates that 90% of trans women in the Americas engage in sex work,<sup>783</sup> while estimates for some individual countries are even higher: between 94% and 95% in Peru and Chile, respectively.<sup>784</sup>

281. Among sex workers, trans women are the group most frequently targeted for persecution and violence both by law enforcement agents and by community members.<sup>785</sup> They often work in unsafe areas at night. Further, they may face the additional risk of being attacked by a client who is initially unaware of their trans identity and who harbors strong prejudice against trans women. In a public hearing held in 2013, the IACHR was informed by civil society organizations that three trans women who were sex workers were kidnapped and killed in El Salvador, amidst a worrying rise in the murder rate of LGBT persons in that country.<sup>786</sup>
282. The IACHR emphasizes that States have the obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans, and intersex women, as per the Belém do Pará Convention. The Commission highlights that the right of every woman to be free from violence, including lesbian, bisexual trans and intersex women, includes the right to be free from discrimination. This includes the right to be valued and to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination.<sup>787</sup> In this sense, OAS Member States have the obligation to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such

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<sup>783</sup> REDLACTRANS, *Report on the Economic, Social and Cultural Rights of the Transgender Population of Latin America and the Caribbean*, December 2014, p. 21.

<sup>784</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 25, fn. 82.

<sup>785</sup> See e.g., [Latin America] REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 14; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TvT), *Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans*, 2012, p. 46; [Colombia] Alianza Iniciativa de Mujeres Colombianas por la Paz et. al., *Una mirada a los derechos de las mujeres en Colombia. Informe alternativo*, Septiembre 2013, p. 38; [Peru] Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2008*, 2009, pp. 85-86; [United States] Human Rights Watch, *Sex Workers at Risk, Condoms as Evidence of Prostitution in Four US Cities*, 2012, p. 2.

<sup>786</sup> COMCAVIS Trans, *Informe para la Audiencia ante la CIDH sobre la situación de violencia contra la población de mujeres trans en El Salvador*, October 2013, p. 11. With respect to El Salvador, the UN Special Rapporteur on violence against women, its causes and consequences, the Salvadorian National Procurator for Human Rights, and the United Nations Resident Coordinator in El Salvador, expressed concern about increasing levels of violence, indicating that in most cases, bodies of victims showed signs of torture, dismemberment, and multiple stabbings, beatings and shots. *Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Follow-up mission to El Salvador, A/HRC/17/26/Add.2*, February 14, 2011, para. 28. *“Posicionamiento ante los recientes homicidios contra la población LGBTI en El Salvador del Procurador para la Defensa de los Derechos Humanos y del Coordinador Residente del Sistema de las Naciones Unidas,”* September 24, 2014.

<sup>787</sup> Article 6, Convention of Belém do Pará.

patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.<sup>788</sup>

283. The Commission highlights the importance of transformative reparations in this respect, whereby the decisions issued by the IACHR and the Inter-American Court go beyond mere restitution in cases of violence against women in order to address the underlying context of structural and historical discrimination and inequality.
284. Finally, the IACHR urges all OAS Member States to specifically include lesbian, bisexual, trans, and intersex women in their legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence. Further, the IACHR urges OAS Member States to disaggregate data related to violence against women, by sexual orientation, gender identity, and bodily diversity (as it relates to intersex persons). In this regard, the IACHR recalls that access to information is closely tied to the attainment of other human rights and is a pre-requisite for demanding and exercising those rights.<sup>789</sup> Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against women and formulating any needed public policy changes.<sup>790</sup>

### ***C. Persons in the Context of Human Mobility***

285. The IACHR has affirmed that persons in the context of human mobility, such as migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, and internally displaced persons, among others, are vulnerable to human rights violations.<sup>791</sup> The IACHR has confirmed how the structural vulnerability of migrants is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or other social condition.<sup>792</sup> Within this group, LGBT persons are extremely vulnerable to violence and discrimination. In many cases, the discrimination and violence faced by LGBT persons due to their sexual orientation and gender identity is what forces them to migrate. This may then lead to forms of discrimination against these persons in countries of transit and destination.

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<sup>788</sup> Articl 8.b, Convention of Belém do Pará.

<sup>789</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 230. See also, for example: IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 4; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paras. 1, 26, 31.

<sup>790</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 42.

<sup>791</sup> IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*. December 30, 2013. OEA/Ser.L/V/II. Doc. 48/13, paras. 5, 51-52, and 80-94.

<sup>792</sup> IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*. December 30, 2013. OEA/Ser.L/V/II. Doc. 48/13, para. 83.

286. In many parts of the world, including in countries in the Americas, LGBT persons experience serious human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity.<sup>793</sup> For example, during the March 2015 period of sessions, the IACHR received reports of threats and various forms of persecution that result in the forced migration of lesbian, gay, bisexual, and trans persons from Honduras, Guatemala, El Salvador, and Nicaragua. Reportedly, Costa Rica is one of the destination countries. The petitioners indicated that international frameworks on asylum do not take into account the specific circumstances of LGBT persons, and that the requirements and level of evidence required for refugee or asylum seekers are often unachievable for LGBT persons. This results in LGBT persons being unable to receive effective international protection. Further, LGBT persons are more vulnerable to extortion and violence on the part of organized crime. The petitioners in that hearing informed the IACHR that many LGBT persons arrive to countries in perilous circumstances and, as a result of their irregular migration status,<sup>794</sup> are forced to live in hiding. The petitioners also indicated that policies related to LGBT asylum seekers and refugees in destination countries are often inadequate and inaccessible.<sup>795</sup>
287. The IACHR has also received information regarding trans persons who engage in sex work outside their countries of origin, and the violence to which they are subjected at the intersection of gender identity and migration. For example, according to information that was documented by a civil society organization, on the night of December 23, 2014, in Suriname, six trans women sex workers who were nationals of Guyana and Trinidad and Tobago were approached by police for the purposes of a “passport check.” Further, they were reportedly forced to sign documents that they could not understand, because the documents were not available in English. During their detention they were allegedly subjected to inhuman and degrading treatment, including physical and verbal abuse related to their gender identity and gender expression. It was also reported that the prosecutor refused to speak at a reasonable pace in order for the interpreter to be able to adequately translate for them. Finally, it is also alleged that prison officials encouraged other inmates to assault the trans women during their detention, and

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<sup>793</sup> UNCHR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 1. The Commission notes that there is a high number of persons applying for refugee status, originating from countries in the Americas, in particular from the Caribbean. See, e.g., Washington Post, *Jamaica's gays finding refuge by applying for U.S. asylum*, article by Shankar Vedantam, February 11, 2011.

<sup>794</sup> The IACHR will use the expression “migrant in an irregular situation” to refer to those migrants who have entered the territory of a State of which they are not nationals without the necessary documentation or have stayed past the time that they were authorized to stay in any of the OAS Member States. The Commission recommends that OAS Member States avoid the use of expressions “illegal” and “illegal migrant” to refer to migrants whose immigration status is irregular. The use of the expressions “illegal” and “illegal migrant” reinforces the criminalization of migrants and the false and negative stereotype that migrants are criminals for the simple fact of being in an irregular situation.

<sup>795</sup> IACHR, Public Hearing, *Forced Migration and Persecution of LGBT Defenders in Central America*. 154<sup>th</sup> Period of Sessions. March 17, 2015. See also, IACHR, Press Release No. 37A/15, *Report on the 154th Session of the IACHR*, June 19, 2015.

that they were forced to perform sex work in prison in order to access food, water, and toilet facilities.<sup>796</sup>

288. Refugee claims based on sexual orientation and/or gender identity are most commonly analyzed under the grounds of “membership of a particular social group” under the five grounds for persecution established in the 1951 Refugee Convention.<sup>797</sup> Amongst the barriers to legal protection for LGBT refugees is the difficulty of successfully undergoing an interview with an adjudicator. This is due to the reality that most LGBT refugees or asylum seekers “do not feel safe to narrate their experiences truthfully or fully during their refugee status determination.”<sup>798</sup> LGBT refugees’ experiences “have taught them that they need to hide to survive. Speaking openly with strangers about their lives can feel shameful and dangerous.”<sup>799</sup>

289. In the context of migration, in the last decade the persecution of people because of their sexual orientation and gender identity has led to an increasing number of asylum applications submitted by LGBTI persons.<sup>800</sup> In response to this situation, UNHCR published a Guidance Note in 2008 and a Guideline in 2012, which serve as guides in addressing this issue. In the Guidance Note, UNHCR noted that:

LGBT individuals may be subjected by State authorities, their families or communities to physical, sexual and verbal abuse and discrimination, because of who they are or who they are perceived to be. This might be because of prevailing cultural and social norms, which result in intolerance and prejudice, or because of national laws, which reflect these attitudes. Where such acts of abuse and discrimination go unpunished and/or where LGBT orientation is criminalized, such individuals may, if they seek asylum on these grounds, fall within the refugee definition of the 1951 Convention relating to the Status of Refugees.<sup>801</sup>

290. Further, the 2012 Guidelines include recommendations for adjudicating the refugee status of LGBT applicants, which include the recommendation that adjudicators not rely on stereotypical assumptions of LGBT persons. Some examples of these stereotypical assumptions include: that all gay men are effeminate; that if a lesbian woman or gay man has previously been in different sex

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<sup>796</sup> SASOD (Guyana), *Documentation on Transgender Sex Workers detained in Suriname*, received by the IACHR Executive Secretariat on July 14, 2015.

<sup>797</sup> UNCHR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, October 23, 2012, para. 40.

<sup>798</sup> ORAM, *Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders*, February 2013, p. 12.

<sup>799</sup> ORAM, *Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders*, February 2013, p. 11.

<sup>800</sup> IACHR, Press release No. 68/14, *World Refugee Day: IACHR Emphasizes the Importance of the Right to Seek and Receive Asylum*, June 20, 2014.

<sup>801</sup> UN High Commissioner for Refugees (UNHCR), *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, November 21, 2008, para. 3.

relationship, including marriage and having children, that he or she is not truly gay or lesbian; that bisexual persons must be attracted to both sexes at the same time or an equal attraction to both men and women, among others.<sup>802</sup> Further, it is important to note that not all trans persons choose medical treatment or other steps to modify their physical appearance, and as such, it is important for decision-makers to avoid overemphasis on gender affirming surgeries.<sup>803</sup> Past persecution is not a prerequisite to refugee status; instead, a well-founded fear of persecution, based on the assessment of the predicament that the applicant would face if returned to the country of origin, could be sufficient.<sup>804</sup>

291. Articles 22(7) and 22(8) of the American Convention establish the right to seek and receive asylum<sup>805</sup> and the non-refoulement principle,<sup>806</sup> respectively. As noted elsewhere in this Report, the IACHR has held that the American Convention is a living instrument which must be interpreted according to current times and evolving conditions. The Inter-American Court has also established that Article 1(1) of the American Convention, concerning States' obligations to respect and guarantee human rights without discrimination, includes sexual orientation and gender identity in "any other social condition."<sup>807</sup> In this regard, the IACHR hereby establishes that States have an obligation not to return refugees to places where their life or personal freedom would be in danger on account of their actual or perceived sexual orientation and/or gender identity.<sup>808</sup> The Commission highlights

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<sup>802</sup> UNCHR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, October 23, 2012, para. 10.

<sup>803</sup> UNCHR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, October 23, 2012, para. 10. See also, United Kingdom: Home Office, *Sexual Orientation Issues in the Asylum Claim*, October 6, 2011; US Department of Homeland Security, RAO Directorate, Officer Training: *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*, rev. November 16, 2011.

<sup>804</sup> UNCHR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, October 23, 2012, paras. 18, 32 and ff, citing a 2008 case from the United States and a 2012 case from Australia.

<sup>805</sup> Article 22.7 of the American Convention establishes "[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes."

<sup>806</sup> Article 22.8 of the American Convention establishes "[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his [/her] country of origin, if in that country his [/her] right to life or personal freedom is in danger of being violated because of his [/her] race, nationality, religion, social status, or political opinions."

<sup>807</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

<sup>808</sup> See related, OHCHR, *Report: Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 2015, para. 12. The IACHR notes in this regard the Yogyakarta Principles, particularly Principle 23 on the right to seek asylum ("Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity." In this regard, "States shall: a) Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum; b) Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or

that OAS Member States have granted refugee status to persons facing persecution due to sexual orientation and gender identity, including Argentina,<sup>809</sup> Canada,<sup>810</sup> Costa Rica,<sup>811</sup> and the United States,<sup>812</sup> among others.

292. Additionally, the IACHR has received troubling information on the human rights violations faced by LGBT asylum seekers in some countries in the region, including high rates of sexual violence and abuse experienced by trans persons in immigration detention centers. According to the information received regarding immigration detention centers in the United States, for example, although only one of every 500 detainees held in an Immigration and Customs Enforcement (ICE) facility is transgender, one of every five victims of confirmed sexual abuse in detention is transgender.<sup>813</sup>
293. The Commission has expressed its concern over the repeated acts of violence and discrimination that LGBTI people, or those perceived as such, may face when deprived of freedom in the region, whether in prisons, detention cells, or police lock-ups and immigration detention centers. According to the information received, in several countries trans women are automatically housed with the general male population in immigration detention centers.<sup>814</sup> The IACHR has held that the decision on where to house trans persons should be done on a case-by-case basis, with due respect to their personal dignity, and whenever possible, with prior consultation of the person concerned.
294. The IACHR heard the story of Nicoll Hernandez Polanco, a 24-year-old trans woman from Guatemala who sought asylum in the United States and who was repeatedly sexually abused and placed in solitary confinement in an all-male detention facility in Florence, Arizona.<sup>815</sup> The IACHR has also heard of abuses faced by LGBT migrants in Mexico. According to the reports received, on October 22, 2013, Mexican immigration officials near the Guatemalan border in Tapachula, Chiapas, took an LGBT rights advocate from El Salvador into custody when he tried

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gender identity; c) Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person's sexual orientation or gender identity." Yogyakarta Principles. *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006.

<sup>809</sup> Mlnutouno.com, "[Argentina refugio a un homosexual que escapó de Rusia por homofobia](#)," October 20, 2014 (Available only in Spanish).

<sup>810</sup> Oblogdeoblogda.me, "[Gay Refugee couple from Uganda land safely in Canada, November 26, 2014](#)." For a discussion on LGBT refugees and asylum seekers in Canada, see Sharalyn R. Jordan, "Un/Convention(al) Refugees: Contextualizing the Accounts of Refugees Facing Homophobic or Transphobic Persecution", *Refuge: Canada's Journal on Refugees*, Vol. 26, No. 2 (2009).

<sup>811</sup> IACHR, *Public Hearing, Forced Migration and Persecution of LGBT Defenders in Central America*. 154<sup>th</sup> Period of Sessions. March 17, 2015.

<sup>812</sup> See e.g. Migration Policy Institute, *International Protection for a Newly Surfacing Refugee Community*, January 2, 2013.

<sup>813</sup> Government Accountability Office Report, Immigration Detention, cited in Fusion, *Why did the U.S. lock up these women with men?: A Fusion investigation*, November 17, 2014.

<sup>814</sup> IACHR, Press Release No. 53/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>815</sup> The Advocate, *Guatemalan Trans Woman released after harrowing six months in immigration detention*, May 4, 2015.

to apply for asylum. According to his testimony he was not allowed to bathe, and he was forced to sleep on damp floors. Custodial staff demanded sexual favors from him in exchange for better food. Organizations working with LGBT migrants in Mexico indicate that trans persons who are seeking asylum are also vulnerable to this type of abuse and violence during detention.<sup>816</sup> In this regard, the IACHR has held that States need to adopt urgent and effective measures to guarantee the life, personal security and integrity, and human dignity of LGBT persons, or those perceived as such, in the region's places of detention, including in immigration detention centers.<sup>817</sup>

295. A letter addressed to U.S. President Barack Obama, signed by more than 100 organizations in the United States in December 2014 referred to the case of Johanna, a transgender woman from El Salvador. The petitioners said that she left for the United States after she was gang-raped. "After living in the U.S. for twelve years, Johanna was apprehended by ICE and placed in an all-male detention facility. While in the facility, Johanna was beaten and sexually assaulted by another detained immigrant. Unable to bear the conditions of her detention, she elected to self-deport. Life in El Salvador quickly became too dangerous for her and she attempted to return to the U.S. She crossed the border illegally and was apprehended by the Border Patrol. After being sentenced for illegal reentry, Johanna was sent to an all-male federal prison and was held in solitary confinement for seven months before being deported back to El Salvador for a second time. Upon her arrival at the airport in San Salvador, she was kidnapped and gang-raped. When Johanna reported the crime to the police, they refused to help her and suggested that the men should have killed her. Soon after this, she fled to the U.S. for a third time and was once again arrested by Border Patrol for illegal reentry. She was sentenced and imprisoned for four and a half months in federal prison. Afterward, she was transferred to an all-male ICE detention center where she was held for six months. Johanna was ultimately granted withholding from removal due to the severe violence and persecution she experienced in El Salvador."<sup>818</sup>

296. The IACHR has also received troubling information concerning LGBT persons who are internally displaced. During a visit by Rapporteur Tracy Robinson, and then Chair of the IACHR to Colombia in October 2014, the delegation received reports on the situation of forced displacement of LGBT persons, particularly in areas of the country most affected by the presence of armed groups. These included accounts of acts by paramilitaries and armed illegal groups who specifically target LGBT persons due to their sexual orientation, gender identity, and gender expression.<sup>819</sup> In fact, in its Country Report on Colombia, the IACHR indicated that

<sup>816</sup> Washington Blade, *LGBT Migrants face abuse, discrimination in Mexico*, October 30, 2014.

<sup>817</sup> IACHR, Press Release No. 053/15, *IACHR Expresses Concern about Violence and Discrimination against LGBT Persons Deprived of Liberty*, May 21, 2015.

<sup>818</sup> Letter signed by more than 100 civil society and community based organizations in the United States and the region addressed to President Barack Obama, signed December 16, 2014. See also, Upworthy, "[They put her in solitary confinement for 7 months. Before that, she was in a prison full of men.](#)" November 19, 2014.

<sup>819</sup> IACHR, Press Release No. 118/14, *IACHR Chair concludes visit to Colombia*, October 10, 2014.

since 2007 there have been reports from various sources about specific methods of intimidation and death threats —usually targeting LGBT persons explicitly— which take place in the context of the armed conflict. These methods primarily involve the distribution of pamphlets.<sup>820</sup> Pamphlets are posted in public spaces or distributed among the residents of a certain city or village, announcing that the persons listed in the pamphlet will be killed if they fail to abandon their place of residence within a certain —usually very short— period of time.<sup>821</sup> It is reported that criminal bands (*bacrim*s) or armed groups are responsible for distributing the pamphlets. These groups claim that they are implementing measures of “social cleansing.”<sup>822</sup> The pamphlets refer to LGBT persons as “faggots” or “homosexuals and lesbians who degenerate morals and give a bad example to children.”<sup>823</sup> In this regard, at least 49 pamphlet campaigns targeting LGBT persons were reported between 2007 and 2014.<sup>824</sup>

297. The IACHR also notes with concern the difficulties and obstacles trans persons face in travelling and exercising their right to freedom of movement. Several trans women who are human rights defenders and activists, and who were scheduled to participate in public hearings before the IACHR in October 2013, and the OAS General Assembly in June 2015, had difficulties obtaining, or were unable to obtain, a timely visa for travel to the United States. The IACHR notes that although there are legitimate reasons for a State to deny granting a visa, there is a risk of indirect discrimination in policies and procedures which might disproportionately disadvantage trans persons, given, for example, the high criminalization of trans persons and trans women. In November 2013, the IACHR pointed out that these violations of the human right to freedom of movement have the effect of hampering access to places, such as the Commission, where victims can denounce the very human rights violations they have suffered.<sup>825</sup> The discriminatory treatment that many trans women and trans persons receive when they attempt to cross national borders plays a central role in limiting their movement. These restrictions on movement heighten the socially entrenched association between gender non-conformity and danger.<sup>826</sup> In exercising their power to regulate their borders, the IACHR calls on OAS Member States to have very close regard to the key importance of travel to the work of trans human rights defenders and broadening the respect for the human rights of trans persons. Secondly, since past discrimination may make many trans persons, on the face of it, seem to be less

<sup>820</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013, para. 993.

<sup>821</sup> IACHR, *Hearing on Reports of Violence againsts LGBTI persons in the Colombian Caribbean*, 153<sup>rd</sup> Period of Sessions, October 27, 2014; [Colombia] Colombia Diversa, “*Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*,” June 2014, p. 12.

<sup>822</sup> Defensoría del Pueblo, *Vigésimo Informe del Defensor del Pueblo al Congreso de la República: Primera Parte*, July 20, 2013, p. 227; Colombia Diversa, “*Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*,” June 2014, p. 12.

<sup>823</sup> IACHR, *Hearing on Reports of Violence againsts LGBTI persons in the Colombian Caribbean*, 153<sup>rd</sup> Period of Sessions, October 27, 2014.

<sup>824</sup> Caribe Afirmativo - Global Rights, “*Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno*,” Octubre de 2014, p. 21.

<sup>825</sup> IACHR, *Annex to the Press Release Issued at the Close of the 149th Session*, November 8, 2013. CITE OAS LGBTTTQI Coalition statement on the denial of visas for trans human rights defenders attending the General Assembly in Washington DC in June 2015.

<sup>826</sup> International Gay and Lesbian Human Rights Commission (IGLHRC), *Latin American Trans Women Living in Extreme Poverty*, June 2009, p. 5.

worthy or qualified for visas, the IACHR calls on OAS Member States to carefully review those applications to avoid the risk of indirect discrimination.

298. Finally, the IACHR has received limited but troubling information on the vulnerability of LGBT persons to become victims of human trafficking. Trans women who lack social and political protections may want to flee their home countries, and if they do not have the means to move on their own, they become easy targets for traffickers who seek to profit from and prey on their desperation.<sup>827</sup>
299. There is limited information on the extent of this problem for LGBT persons, but cases have been identified in the United States and Argentina. In 2013, civil society organizations in Argentina identified traffickers who promised transgender women job opportunities in Western Europe, but instead confiscated their passports and forced them into prostitution.<sup>828</sup> Another report indicates that LGBT youth are particularly vulnerable to sex trafficking in Bolivia.<sup>829</sup> The Commission recognizes the efforts conducted by countries such as the United States in gathering data on LGBT persons who are victims of trafficking.<sup>830</sup>
300. Bias and prejudice towards LGBT persons also severely hinder proper identification and access to justice for LGBT persons who are victims of human trafficking.<sup>831</sup> The IACHR recommends that OAS Member States conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims of human trafficking.<sup>832</sup> This training should be developed in consultation with LGBT organizations and support groups.<sup>833</sup>

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<sup>827</sup> Crystal DeBoise, *Human Trafficking of Immigrant Transgender Women: Hidden in the Shadows*, January 11, 2012.

<sup>828</sup> US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, *The Vulnerability of LGBT individuals to Human Trafficking*.

<sup>829</sup> US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014*.

<sup>830</sup> For example, it has been reported that as part of the 2013-2017 Federal Strategic Action Plan on Services for Victims of Trafficking in the United States, agencies in this country have made a commitment to gathering information on the needs of LGBT victims of human trafficking. US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, *The Vulnerability of LGBT individuals to Human Trafficking*.

<sup>831</sup> US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, *The Vulnerability of LGBT individuals to Human Trafficking*.

<sup>832</sup> In this regard, see US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, *The Vulnerability of LGBT individuals to Human Trafficking*.

<sup>833</sup> US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, *The Vulnerability of LGBT individuals to Human Trafficking*.

## D. Children and Adolescents

301. Children<sup>834</sup> and adolescents who are lesbian, gay, bisexual, transgender, or intersex,<sup>835</sup> or who are seen as such, face stigmatization, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of female or male.<sup>836</sup> According to UNICEF, the range of this discrimination and violence includes: isolation from peers at school, at home, or in the community; marginalization and exclusion from essential services like education and health care; abandonment by family and community; bullying and intimidation; and physical and sexual violence, including “corrective” rape.<sup>837</sup> In the previous chapter, the Commission also made reference to the situation of violence against children and adolescents in centers that attempt to “modify” their sexual orientation and/or gender identity. In this regard, the IACHR has affirmed that children and adolescents constitute a group in society who are often defenseless in the face of the injustices committed against them,<sup>838</sup> and the Inter-American Court has indicated that human rights violations in which children and adolescents are the victims are particularly serious.<sup>839</sup>
302. Article 19 of the American Convention establishes that every child has the right to protection by virtue of being a minor, and this creates duties on the part of the child’s family, society, and State. States have the obligation to respect and guarantee this right (Article 19) with respect to children, and to do so without discrimination, including on the basis of sexual orientation and gender identity, per Article 1(1).<sup>840</sup> Similarly, Article VII of the American Declaration affirms that every child has the right to special care and protection.

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<sup>834</sup> According to the Inter-American Court of Human Rights, following the UN Convention on the Rights of the Child, the term “child” refers to any person who has not yet turned 18 years of age. I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42.

<sup>835</sup> Violence against intersex children is addressed in the specific section of the Report concerning intersex persons.

<sup>836</sup> IACHR, Press Release No. 49/15, Joint Statement on International Day against Homophobia, Biphobia and Transphobia in 2015, by the IACHR, and other international and regional bodies. *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>837</sup> UNICEF, *Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity*, November 2014, p. 3.

<sup>838</sup> IACHR, *Report on the Human Rights Situation in Dominican Republic*, OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, para. 430.

<sup>839</sup> I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 134. See also: I/A Court H.R., *The “Street Children” v. Guatemala Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 146; I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, para. 162; and I/A Court H. R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, para. 133.

<sup>840</sup> As indicated in this Report, in the case of Karen Atala v. Chile, the I/A Court of Human Rights has indicated that sexual orientation and gender identity are prohibited grounds of discrimination to be interpreted under the non-discrimination obligation established in Article 1(1) of the American Convention. I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

303. Respect for the rights of the child entails offering care and protection to children, as well as recognizing, respecting and guaranteeing the individual personality of the child as a holder of rights and obligations.<sup>841</sup> Because of their emotional and physical development, children require special measures of protection.<sup>842</sup> According to the Inter-American Commission, that sphere of special protection is dictated by the special conditions of the child as rights bearer, which include the child's vulnerability, dependence on adults in order to exercise certain rights, maturity, growth and development, and general lack of awareness of his or her human rights and of the means by which to demand observance of those rights.<sup>843</sup>
304. The Commission has affirmed that in order to determine States' obligations with respect to children, the American Convention is to be interpreted in light of the provisions of the UN Convention on the Rights of the Child and other UN declarations on the subject,<sup>844</sup> as well as decisions by the UN Committee on the Rights of the Child.<sup>845</sup> The UN Committee on the Rights of the Child has stated that any interpretation of the principle of the "best interests of the child" must be compatible with the Convention on the Rights of the Child, including the obligation to protect children from all forms of violence.<sup>846</sup> The principle of the best of interests of the child implies that "children's development and full enjoyment of their rights must be considered the guiding principles to establish and apply provisions pertaining to all aspects of children's lives."<sup>847</sup>
305. The UN Committee on the Rights of the Child has indicated that LGBT children are among those who are most vulnerable to violence,<sup>848</sup> and the Special Representative to the UN Secretary-General on violence against children has stated that all children should be protected from all forms of violence regardless of their sexual orientation or other status.<sup>849</sup> Further, the UN Committee on the Rights of the Child has affirmed that sexual orientation and gender identity are prohibited

<sup>841</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, paras. 37 and 53; and *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194. IACHR, *Third Report on the Situation of Human Rights in Colombia*, 1999, Chapter XIII, para. 1; IACHR, Report No. 33/04, Jailton Neri Da Fonseca (Brazil), Case 11.634, March 11, 2004, para. 80.

<sup>842</sup> I/A Court H.R., *Case of Servellón García et al.*, Judgment of September 21, 2006. Series C No. 152, para.133.

<sup>843</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, OEA/Ser.L/V/II.135, Doc. 14, August 5, 2009 (hereinafter "IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009"), para. 23.

<sup>844</sup> IACHR, Report No. 41/99, Case 11.491, *Minors in Detention, Honduras*, March 10, 1999, para. 72. Further, "Both the American Convention and the Convention on the Rights of the Child are part of a broad international *corpus juris* for protection of children that aids this Court in establishing the content and scope of the general provision defined in Article 19 of the American Convention." I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, paras. 37 and 53; and *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194.

<sup>845</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 21.

<sup>846</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 24.

<sup>847</sup> I/A Court H.R., Advisory Opinion OC-17/2002, *Juridical Condition and Human Rights of the Child*, August 28, 2002, paras.53 and 137-6.

<sup>848</sup> Committee on the Rights of the Child, *General Comment No. 13: The rights of the child to freedom from all forms of violence*, CRC/GC/2011/13, April 18, 2011.

<sup>849</sup> United Nations, Human Rights Council, *Annual report of the Special Representative to the Secretary-General on violence against children*, A/HRC/19/64, January 13, 2012.

grounds of discrimination under Article 2 of the UN Convention on the Rights of the Child.<sup>850</sup>

306. According to the information received by the Inter-American Commission, violence against LGBT children most commonly manifests itself within the family and in schools (both public and private). Thus, this chapter will focus on violence against children and adolescents who are LGBT, or who are perceived as such, in those two environments.
307. States are obliged to protect all people under their jurisdiction. This obligation is with regard not only to the State's own exercise of power, but also to the actions of private parties insofar as the State is obliged to take measures to prevent and respond to these acts.<sup>851</sup> According to the Inter-American Court, there is no room for deference to individuals acting in the private sphere, particularly regarding the full respect for the human rights of children and adolescents.<sup>852</sup>
308. Under international human rights law, States must oversee the provision of services that are in the public interest, such as health or education, when those services are rendered by private entities.<sup>853</sup> As such, States have the special duty to protect the life and personal integrity of persons through regulating and supervising these services, regardless of whether the entity giving them is public or private, since "under the American Convention international liability comprises the acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them."<sup>854</sup> The IACHR has further established that this obligation of supervision is "of fundamental importance when the services being supervised are those provided by public or private institutions charged with the protection, safekeeping, care and education of children."<sup>855</sup>
309. Accepting, articulating and expressing one's sexual orientation and/or gender identity is a highly personal process, which can arise at different points in life depending on the person. Further, this process may differ from the outward and

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<sup>850</sup> UN Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, April 17, 2013, para. 8.

<sup>851</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 74, citing I/A Court H.R., *Matter of the Sarayaku Indigenous People*, Order of June 17, 2005, Explanation of Vote by Judge Antônio Cançado Trindade, paras. 14 to 20.

<sup>852</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 75, citing I/A Court H.R., *Judicial Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 66.

<sup>853</sup> I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paras. 94, 96, 99. I/A Court H.R., *Case of Alban Cornejo et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, para. 119.

<sup>854</sup> I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights, citing: *Case of Ximenes Lopes v. Brazil*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, paras. 89 and 90, and Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para.19; *Judicial Condition and Rights of the Undocumented Migrants*, paras. 146 and 147.

<sup>855</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 69.

open manifestation of the person's sexual orientation or gender identity within the family or community.

310. As in the case of adults, LGBT children may be targeted either because they have publicly assumed their sexual orientation or their gender identity, or simply because they are perceived to defy traditional standards of masculinity or femininity. In other words, children suffer from discrimination and marginalization based on their gender expression, even before they have become fully aware of their sexuality or identity. In this regard, a study conducted with the cooperation of UNESCO and UNDP in three OAS Member States indicated that, for example, often harassment occurs when a boy is perceived to be feminine or does not outwardly conform to masculine stereotypes.<sup>856</sup>
311. The IACHR has received troubling reports of violent attacks perpetrated by parents, siblings, or other relatives against LGBT children, or those perceived as such, in countries across the Americas. Familial violence against LGBT persons is a constant issue. This includes persons being denied schooling opportunities, subjected to sexual violence, expelled from the home, and/or physically and psychologically abused.<sup>857</sup>
312. Children are often expelled from their homes after disclosing their sexual orientation to their parents.<sup>858</sup> As was explained in a joint statement by the IACHR, the UN Committee on the Rights of the Child, and other international experts, LGBT children (and young people) too often face rejection by their families and communities who disapprove of their sexual orientation or gender identity, which can result in high rates of homelessness, social exclusion, and poverty.<sup>859</sup>
313. Extreme examples of this include: a mother torturing and killing her 4-year-old son because she perceived him to be gay;<sup>860</sup> a father brutally attacking and humiliating his 16-year-old son, tying the child's feet to a pickup truck and threatening to drag

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<sup>856</sup> Instituto de Estudios en Salud, Sexualidad y Desarrollo Humano, Universidad Peruana Cayetano Heredia, PNUD, UNESCO, “*‘Era como ir todos los días al matadero...’: El bullying homofóbico en instituciones públicas de Chile, Guatemala y Perú.*” Documento de trabajo, 2013, p. 14.

<sup>857</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the organization *Colectivo Entre Tránsitos et. al.* (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 14. See also Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México* (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 6.

<sup>858</sup> [Venezuela] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20 2013, received by IACHR Executive Secretariat on December 26 2013, p. 3; [Guatemala] Organización de Apoyo a una Sexualidad Integral Frente al SIDA (OASIS), “*Crímenes de Odio en Guatemala: una Aproximación a los Retos y Desafíos para el Desarrollo de una Investigación sobre Crímenes en el País en contra de Gay, Bisexuales y Trans,*” April, 2010, p. 35.

<sup>859</sup> IACHR, Press Release No. 49/15, Joint Statement on International Day against Homophobia, Biphobia and Transphobia in 2015, by the IACHR, and other international and regional bodies. *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>860</sup> [United States] Oregon Live, *Jessica Dutro murder trial: Jury sees Facebook message with gay slur referring to 4-year-old*, March 28, 2014; *Jessica Dutro murder trial: Motive for Tigard killing was 4-year-old's perceived homosexuality, prosecutors say*, March 27, 2014.

him down the street because of his sexual orientation;<sup>861</sup> a sister continuously humiliating and attacking her 15 year old brother, including throwing urine on him, because he was gay (aggressions which eventually lead to the boy's suicide);<sup>862</sup> a father setting his son on fire because he discovered he was gay and was living with HIV;<sup>863</sup> and a brother brutally attacking his brother and threatening to kill him because he was gay.<sup>864</sup>

314. In Haiti, for example, the IACHR was informed of the case of a young man who, when he came out to his family, was attacked with a machete and beaten by his brother. When he went to the police, they told him that his brother was right to beat him if he was gay. Allegedly the police then declined to record his complaint and investigate.<sup>865</sup> In Guyana a civil society organization was contacted when a father threw his gay 13-year old boy out of his home and threatened to kill him. The Child Care and Protection Agency (CCPA) intervened and placed the child with his grandmother. The father was able to continue the abuse and harassment; there was no effective legal intervention in this case.<sup>866</sup>
315. The Commission has also received reports of cases in which parents or other family members exert physical violence against children because they perceive them as, lesbian, gay, bisexual, or gender non-conforming, with the intent of “correcting” the children, a brutal method referred to as “beating the gay out/away.”<sup>867</sup> As examined in the previous chapter, brutal methods to “eradicate” same-sex attraction may also include sexual violence. For example, in 2014, a U.S.-based organization announced that it was providing legal aid to a “conversion therapy” survivor who alleges that “shortly after coming out in 1996, his parents turned to the local church, which ran a school it promised could “cure” him and “stop him from being gay.” According to the victim, a teacher began subjecting him to weekly “counseling” sessions in which he regularly raped the teenager to convince him that being gay was more painful than suppressing his sexual orientation.<sup>868</sup>

<sup>861</sup> [Brazil] UOL Noticias, *“Pai é indiciado por torturar filho gay e ameaçar arrastá-lo pela rua em Três Lagoas (MS)”*, August 2, 2013 (Available only in Portuguese); Correo do Estado, *“Pai é indiciado depois de ameaçar matar filho gay”*, August 1, 2013 (Available only in Portuguese).

<sup>862</sup> [Peru] Red Peruana de Trans, Lesbianas, Gays y Bisexuales (RED PERUANA TLGB) & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2013-2014*, 2014, p. 31.

<sup>863</sup> [Peru] Perú 21, *“Loreto: Quema a su hijo tras descubrir que era homosexual”*, April 12, 2013 (Available only in Spanish). Huffington Post, *“Hitler Baneo Núñez, padre peruano, incendia a su hijo por ser gay y VIH positivo”*, April 18, 2013 (Available only in Spanish).

<sup>864</sup> [Brazil] A Critica, *“Jovem agride irmão em Coxim, após descobrir que ele é homossexual”*, March 5, 2014 (Available only in Portuguese).

<sup>865</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>866</sup> Red Thread, Artistes in Direct Support (A.I.D.S.), Family Awareness Conscious Together (FACT) & Society Against Sexual Orientation Discrimination (SASOD), *Sexuality and Gender Issues Affecting Children in Guyana: A Joint Submission under the Convention of the Rights of the Child*, January 2013, p. 7.

<sup>867</sup> Huffington Post, *Mary Gowans, North Carolina Mother, Allegedly Instructed Son To ‘Beat The Gay’ Out Of Older Brother*, August 28, 2013; Gay Star News, *Ohio man sentenced to 2 ½ years for trying to beat the gay out of disabled brother*, April 15, 2014.

<sup>868</sup> National Center for Lesbian Rights (NCLR), *NCLR Representing Conversion Therapy Survivor who Alleges Sexual Abuse by School Leader After Coming Out*, August 27, 2014.

316. With respect to family violence against children who are lesbian, gay, bisexual and trans or perceived as such, the IACHR wishes to highlight that the adoption of special measures to protect children is a responsibility of the State and of the family, community, and society to which the children belong.<sup>869</sup> As such, the State, society, and family “must prevent and avoid, by every means possible, any form of violence against children, in every realm and by any method.”<sup>870</sup> Further, according to the Inter-American Court, there must be a fair balance between the interests of the individual and those of the community, as well as between the interests of children and those of their parents.<sup>871</sup> Further, the authority of the family does not entitle it to exercise arbitrary control over a child where such exercise of control could pose a threat to the child’s health or development.<sup>872</sup>
317. School bullying is a specific type of violence that takes place in educational environments. A review issued by UNESCO in 2012 indicated that bullying is characterized by a set of key features, namely: the intention of the perpetrator to cause harm or fear; the systematic nature of the violence; its repetition over time; power imbalance between the victim and the bully; and resulting harm.<sup>873</sup> The UN Human Rights Committee has expressed concern about reports of discrimination against LGBT persons in the education system,<sup>874</sup> and the UN Secretary General in 2011 affirmed that bullying based on sexual orientation or gender identity is a grave violation of human rights.<sup>875</sup>
318. Children who are LGBT or are perceived as such suffer higher levels of victimization as a group and are exposed to greater risk of being bullied than other children at school.<sup>876</sup> In fact, various studies from the Americas indicate that school bullying based on sexual orientation or gender identity or expression is a cause for grave concern in the hemisphere.<sup>877</sup> States such as Honduras and the United States have acknowledged this problem.<sup>878</sup>

<sup>869</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, para.62.

<sup>870</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 28.

<sup>871</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 76, citing Advisory Opinion 17 and jurisprudence from the European Court.

<sup>872</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 76, citing jurisprudence from the European Court.

<sup>873</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO), *Review of Homophobic Bullying in Educational Institutions*, Prepared for the International Consultation on Homophobic Bullying in Educational Institutions Rio de Janeiro, Brazil, December 6-9, 2011, March 12, 2012, p. 4.

<sup>874</sup> Human Rights Committee, *Concluding observations: Mexico*, CCPR/C/MEX/CO/5, May 17, 2010, para. 21.

<sup>875</sup> UN News Centre, *Homophobic bullying represents grave violation of human rights – Ban*, December 8, 2011.

<sup>876</sup> UNICEF (Canada), *Bullying and Cyberbullying: Two Sides of the Same Coin*, Brief submitted by UNICEF Canada to the Standing Senate Committee on Human Rights, May 28, 2012, p. 3; UN Special Representative of the Secretary-General on Violence against Children, *Tackling Violence in Schools: a global perspective*, prepared for the High-Level Expert Meeting on “Tackling Violence in Schools” Oslo, Norway, June 27-28, 2011, p. 17; Pinheiro, Paulo Sérgio, *World Report on Violence Against Children*, 2006, p. 121; Movimiento Mundial por Infancia et al., *Mapeo Región América del Sur: Implementación de las Recomendaciones del Estudio Mundial sobre la Violencia contra los Niños y Niñas*, July 2011, p. 20.

<sup>877</sup> [Barbados] Caribbean HIV & AIDS Alliance, *Assessing the Feasibility and Acceptability of Implementing the “Mpowerment Project”: An Evidence-Based HIV Prevention Intervention for Gay Men in Barbados*, 2010, p. 41; [Bolivia] Conexión Fondo de Emancipación, *“Situación de las poblaciones TLGB en Bolivia: Encuesta Nacional 2010”*, 2011, p. 32; [Canada] Eagle Canada Human Rights Trust, *Every Class in Every School: Final*

319. In Canada, a report showed that almost 40% of trans students and 20% of lesbian, gay or bisexual students reported having being physically harassed or assaulted because of their real or perceived sexual orientation or gender identity.<sup>879</sup> One gruesome case involved teens on a school bus trying to stuff batteries down the throat of a young boy because he was a figure skater; who had committed suicide due to the bullying he faced.<sup>880</sup> In Chile, a survey showed that educational environments rank among the most common places where discrimination and violence against LGBT persons are found are present.<sup>881</sup>
320. In the United States, a 2011 report indicated that nearly half of trans students (44%) said that they had been punched, kicked, or injured with a weapon on at least one occasion in the previous year.<sup>882</sup> Also in the United States, there have been several lawsuits in which acts of bullying based on sexual orientation escalated to acts of brutal violence against the victims, mainly because milder manifestations of violence or discrimination were either ignored or not taken seriously by school and district authorities. These cases involved relentless teasing, name-calling, and verbal abuse which escalated to more severe attacks, including: repeated molestation or touching of the victim's genitals while the perpetrators hurled derogatory epithets;<sup>883</sup> dragging the victim behind a pickup truck with a lasso around the victim's neck;<sup>884</sup> punching, kicking, and throwing the victim into a urinal;<sup>885</sup> spraying water and dumping hot melted cheese on the victim's head;<sup>886</sup> urination and mock rape;<sup>887</sup> throwing bottles and pushing the

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*Report on the First National Climate Survey on Homophobia, Biphobia and Transphobia in Canadian Schools*; [El Salvador] United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), “Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador”, 2013, p. 21; [Guyana] Society Against Sexual Orientation Discrimination (SASOD) & Sexual Rights Initiative (SRI), *On Devil’s Island: A UPR Submission on LGBT Human Rights in Guyana*, June 2014, para. 30; [United States] Gay, Lesbian & Straight Education Network (GLSEN), *The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools*, 2014; National Center for Transgender Equality and the National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 2011, pp. 33-47; [Regional] Instituto de Estudios en Salud, Sexualidad y Desarrollo Humano, Universidad Peruana Cayetano Heredia, UNDP, UNESCO, “‘Era como ir todos los días al matadero...’: El bullying homofóbico en instituciones públicas de Chile, Guatemala y Perú”. Documento de trabajo, 2013, p. 14.

<sup>878</sup> [Honduras] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 16; [United States] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), p. 28.

<sup>879</sup> Eagle Canada Human Rights Trust, *Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia and Transphobia in Canadian Schools*, 2011.

<sup>880</sup> CBC News, “[Gay Ottawa teen who killed himself was bullied](#),” 18 October 2011.

<sup>881</sup> Centro Latinoamericano en Sexualidad y Derechos Humanos (CLAM) & Instituto de Medicina Social Universidad del Estado de Río de Janeiro (IMS), “*Derechos, Política, Violencia y Diversidad Sexual, Segunda Encuesta Marcha de la Diversidad Sexual Santiago de Chile 2011*,” 2012, p. 45.

<sup>882</sup> National Center for Transgender Equality, *Peer Violence and Bullying Against Transgender and Gender Nonconforming Youth*, May 2011, p. 5.

<sup>883</sup> *Montgomery v. Independent School District No. 709*, 109 F.Supp. 2d 1081 (2000).

<sup>884</sup> *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001); Lambda Legal, “Groundbreaking Legal Settlement is First to Recognize Constitutional Right of Gay and Lesbian Students to be Out at School & Protected From Harassment,” 28 August 2002.

<sup>885</sup> *Schroeder v. Maumee Board of Education*, 296 F. Supp. 2d 869 (2003).

<sup>886</sup> *Martin v. Swartz Creek Community Schools*, 419 F.Supp. 2d 967 (2006).

victim down the stairs;<sup>888</sup> continuously shoving the victim into lockers and spiting on the victim;<sup>889</sup> and continuous harassment culminating in a sexual assault in the school locker-room;<sup>890</sup> among others.

321. In a joint statement issued by the IACHR, the UN Committee on the Rights of the Child, and independent human rights experts, these agencies affirmed, “LGBT children are often bullied by classmates and teachers, resulting in some students dropping out. They may even be refused school admission or expelled on the basis of their actual or perceived sexual orientation or gender identity.”<sup>891</sup>
322. The Inter-American Commission was informed that in many OAS Member States, school bullying based on sexual orientation or gender identity or expression can be so severe that it is one of the main reasons behind school absenteeism and dropout rates of lesbian, gay, bisexual, and trans students. This problem has been acknowledged by state agencies<sup>892</sup> and has been extensively documented by organizations across the Americas. For instance, the State of Argentina informed the IACHR that a local survey estimated that 64% of trans women had been unable to finish their primary studies. The survey reported that 84% had been unable to attain a highschool diploma.<sup>893</sup> These worrying levels of school non-completion were consistent with the same survey indicating that 91% of trans women had been victims of violence.<sup>894</sup>
323. Several organizations have highlighted that teachers and school authorities are often either indifferent toward or unable to effectively address school bullying based on sexual orientation or gender identity.<sup>895</sup> Civil society organizations even report the existence of school bylaws that expressly discriminate against students

<sup>887</sup> *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996); The New York Times, “[Suit Says Schools Failed To Protect a Gay Student](#),” March 29, 1996.

<sup>888</sup> *Wadington v. Holmdel Township Board of Education*; Lambda Legal, “[Lambda Legal Files Lawsuit on Behalf of Lesbian Student Who Left Holmdel High School in New Jersey Fearing for Her Safety](#),” September 7, 2005.

<sup>889</sup> *Donovan and Ramelli v. Poway Unified School District Decision*; Lambda Legal, “[California Court of Appeals Upholds \\$300,000 Award to Bullied Pair of Gay and Lesbian High School Students](#),” October 10, 2008.

<sup>890</sup> *Patterson v. Hudson Area Schools*, 551 F.3d 438, 448–49 (6th Cir. 2009).

<sup>891</sup> IACHR, Press Release No. 49/15, *Joint Statement on International Day against Homophobia, Biphobia and Transphobia in 2015*, by the IACHR, and other international and regional bodies. “[Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#),” May 17, 2015.

<sup>892</sup> [El Salvador] United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), “*Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*,” 2013, p. 21; [Honduras] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 16.

<sup>893</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.

<sup>894</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.

<sup>895</sup> [Guyana] Red Thread, Artistes In Direct Support (A.I.D.S.), Family Awareness Conscious Together (FACT) & Society Against Sexual Orientation Discrimination (SASOD), *Sexuality and Gender Issues Affecting Children in Guyana: A Joint Submission under the Convention of the Rights of the Child*, January 2013, p. 7; [United States] National Center for Transgender Equality, *Peer Violence and Bullying Against Transgender and Gender Nonconforming Youth*, May 2011, p. 5.

based on their sexual orientation and gender identity,<sup>896</sup> as well as cases of students being expelled from schools for being gay, lesbian, bisexual, or trans.<sup>897</sup> For instance, in a case reported in Peru, the headmaster of the school publicly announced that she would “initiate an investigation” to find out if two male students were in a relationship, in order to have them expelled from the institution to “preserve the school’s prestige and reputation.”<sup>898</sup> Other sources indicate that teachers and school authorities themselves may be perpetrators of bullying against LGBT children.<sup>899</sup> These serious human rights violations stigmatize LGBT persons, justify the violence in the minds of potential perpetrators, and foster further acts of bullying and violence towards LGBT children or those perceived as such.

324. The Inter-American Commission notes that bullying may severely hinder numerous rights, such as the right to education, the right to freedom of expression, and the right to equality and non-discrimination. Above all, bullying may cripple the psychological wellbeing and mental health of the victim. Severe and persistent bullying has led LGBT children to commit suicide.<sup>900</sup> UNICEF notes, “there is robust

<sup>896</sup> [Chile] Movimiento de Integración y Liberación Homosexual (MOVILH), “*XI Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile*” 2012, 2013, pp. 70 a 73; [Colombia] in IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, citing: *Information on the Situation of Human Rights of LGBTI Persons in Colombia*, submitted by “Colombia Diversa,” received by the IACHR Executive Secretariat on December 11, 2014; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013, dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 4.

<sup>897</sup> [Bolivia] Red de Travestis, Transexuales y Transgénero de Bolivia (Red TREBOL) & Heartland Alliance for Human Needs & Human Rights, *La situación de los derechos humanos de las personas lesbianas, gay, bisexuales, transgénero en Bolivia*, March 2013, p. 6; [Jamaica] Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*. October 2011, pp. 22; [Peru] Defensoría del Pueblo, *La discriminación en el Perú: Problemática, normatividad y tareas pendientes*, Serie Documentos Defensoriales – Documento N° 2, Septiembre 2007, p. 109.

<sup>898</sup> [Peru] Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), “*Informe Anual sobre Derechos Humanos de personas Trans, Lesbianas, Gays y Bisexuales en el Perú 2008*”, 2009, p. 60.

<sup>899</sup> [Bolivia] Conexión Fondo de Emancipación, “*Situación de las poblaciones TLGB en Bolivia: Encuesta Nacional 2010*,” 2011, p. 31; [Chile] Movimiento de Integración y Liberación Homosexual (MOVILH), “*Informe anual de derechos humanos de la diversidad sexual en Chile*,” 2014, pp. 13, 65; [El Salvador] United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), “*Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*,” 2013, p. 22; [Guyana] Red Thread, Artistes In Direct Support (A.I.D.S.), Family Awareness Conscious Together (FACT) & Society Against Sexual Orientation Discrimination (SASOD), *Sexuality and Gender Issues Affecting Children in Guyana: A Joint Submission under the Convention of the Rights of the Child*, January 2013, p. 7; [Regional] Movimiento Mundial por Infancia et al., “*Mapeo Región América del Sur: Implementación de las Recomendaciones del Estudio Mundial sobre la Violencia contra los Niños y Niñas*,” July 2011, p. 20.

<sup>900</sup> [Argentina] Sentido G, “*Joven riojano se suicida tras sufrir acoso homofóbico*,” April 28, 2011 (Available only in Spanish); [Brazil] UOL.com, “*Estudante de 12 anos comete suicídio em Vitória após sofrer bullying na escola*,” March 2, 2012 (Available only in Portuguese); [Canada] CBC News, *Gay Ottawa teen who killed himself was bullied* October 18, 2011; [Mexico] SDP Noticias, “*Adolescente gay se suicida por bullying en Hermosillo; “no aguantó la carrilla”*,” October 24, 2013; [United States] QUEERTY, *Bullied to Death: Seth Walsh, 13, dies after 10 days on life support after suicide attempt*, September 28, 2010; CNN News, *Parents’ suit says school ignored bullying that led to teen’s suicide*, March 29, 2011; FOX 40, *12-year-old Bullying Victim, Ronin Shimizu, Remembered by Cheer Squads*, 7 December 2014; Huffington Post, *Gay New Mexico Teen Commits Suicide After Reportedly Being Bullied By Classmates*, July 16, 2013; Huffington Post, *Gay*

evidence to suggest that LGBT children and youth who are exposed to discrimination are more likely to consider or attempt suicide than their peers.”<sup>901</sup>

325. The IACHR has condemned acts of intimidation or harassment in education environments based on a person’s sexual orientation, gender identity or gender expression.<sup>902</sup> If bullying is tolerated, a strong social message is sent to LGBT persons that the open expression of their orientations or identities is not accepted. The corollary of this message is the promotion of anti-LGBT feelings among children and teachers, the fostering of bullying and discrimination, and the reinforcement of stigma and feelings of shame and inferiority among LGBT persons.<sup>903</sup> The UN Committee on the Rights of the Child has affirmed that it is crucial to react appropriately and prevent bullying, and to ensure that the measures chosen against bullying do not exacerbate violence by taking a punitive approach that uses violence against violence.<sup>904</sup>
326. The Commission has also noted that prejudice and social stigma can be particularly harmful to LGBT children.<sup>905</sup> According to UNICEF, States must address “social norms and practices that discriminate and marginalize children and adults based on real or perceived sexual orientation and gender identity.”<sup>906</sup> States must ensure that their education policies are specially designed to modify social and cultural patterns of conduct, to counteract prejudices and customs, and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence based on prejudice.<sup>907</sup>
327. The IACHR has held that in meeting their international obligations vis-à-vis the protection of children, States must ensure that the exercise of rights by parents, guardians, and other persons responsible for the care and education of children and adolescents does not mean that the rights of those children and adolescents are not given the protection required.<sup>908</sup> As such, States are obliged to adopt all positive measures required to ensure the protection of children against mistreatment, whether in their relationships with public authorities or in relationships among individuals or with non-governmental entities.<sup>909</sup>

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*Iowa Teen Commits Suicide, Was Allegedly Bullied By Classmates*,” July 29, 2013; Uniradio Noticias “*Madre de Sergio Alonso clama justicia a autoridades escolares*”, October 23, 2013 (Available only in Spanish).

<sup>901</sup> UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 3.

<sup>902</sup> IACHR, Press Release No. 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>903</sup> IACHR, Press Release No. 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>904</sup> Committee on the Rights of the Child, *General comment No. 13: The right of the child to freedom from all forms of violence*, CRC/C/GC/13, para. 27.

<sup>905</sup> IACHR, Press Release No. 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>906</sup> UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 4.

<sup>907</sup> IACHR, Press Release No. 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>908</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 77.

<sup>909</sup> I/A Court H.R., *Resolution of January 27, 2009*, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights, citing: I/A Court H.R., *Judicial Status and Human*

328. Sexual and gender-based violence against students is facilitated by the State's failure to enact and implement laws and policies that provide students with explicit protection from discrimination and violence.<sup>910</sup> In the developments of these laws (and public policies), States must ensure that children "have their voices and viewpoints heard and are able to participate fully and meaningfully."<sup>911</sup> In a 2014 position paper, UNICEF stated that non-discriminatory legislation, a change in social norms, and greater awareness and access to knowledge on the issue of sexual orientation and gender identity are essential components of an enabling environment to protect LGBT children from discrimination and support the realization of their rights.<sup>912</sup>
329. Finally, the IACHR has affirmed that "States are obliged to create effective mechanisms for preventing and punishing acts of violence against children and adolescents, both at home and in the educational system, as well as in other areas of social life where such threats may arise. Consequently, it is clear that the Member States are under the obligation of adopting strict oversight programs to monitor the situation of children and of taking the steps necessary to uphold the rights of children, particularly those that are victims of violence."<sup>913</sup> Further, the Inter-American Court has highlighted that the obligation enshrined in Article 2 of the American Convention demands that States eliminate any norms and practices that in any way violate the guarantees provided under the Convention, and enact legislation and develop practices that are conducive to effective observance of those guarantees.<sup>914</sup>
330. The IACHR calls on OAS Member States to fulfill their obligations to respect, guarantee, and adopt measures at the domestic level to fully guarantee the rights of LGBT children, or those perceived as such, to a life that is free from discrimination and violence, both within the family and school. These measures include: eradication from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities; oversight and control of school regulations which discriminate against LGBT students; comprehensive policies to prevent, investigate and sanction violence against LGBT children, regardless of where it takes place; special measures aimed at documenting and producing data related to violence against children based on perceived or actual sexual orientation and gender identity; the establishment of effective complaint mechanisms regarding, and the investigation with due diligence of, instances of violence against LGBT children whether in the

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*Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17. See also: *Case of Ximenes Lopes*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, paras. 89 and 90.

<sup>910</sup> *Report of the independent expert for the United Nations study on violence against children*, A/61/299, August 29, 2006, para. 52.

<sup>911</sup> UNICEF, *Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity*, November 2014, p. 4.

<sup>912</sup> UNICEF, *Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity*, November 2014, p. 3.

<sup>913</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 67.

<sup>914</sup> I/A Court H.R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, para.178. *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 180, cited in IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, 2009, para. 73.

home or school; the training of state institutions that are charged with overseeing the well-being of children so that they are able to identify abuse and violence related to sexual orientation and gender identity against children in the home and provide appropriate measures to protect them for such violence; and adoption of public awareness campaigns featuring LGBT children and diversity in families so as to promote respect and acceptance of this diversity; among other measures.

## **E. Human Rights Defenders**

331. The IACHR reiterates that the work of human rights defenders<sup>915</sup> is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracy. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.<sup>916</sup> The IACHR understands that the exercise of the right to defend human rights implies the possibility of freely and effectively promoting and defending any right the acceptance of which is unquestioned,<sup>917</sup> as well as any new rights or components of rights which is still a matter of debate.<sup>918</sup>
332. In this regard, the Commission recalls that States should continue or initiate dialogue processes with LGBTI human rights defenders, with the aim of learning about the problems they face and facilitate their active participation in the adoption of public policies.<sup>919</sup> These spaces for dialogue should be established in accordance with the rights of freedom of assembly and freedom of association as guaranteed in Article XXI of the American Declaration and Article 15 of the American Convention, as well as other international instruments.<sup>920</sup> It is through the rights of freedom of assembly and freedom of association that LGBTI human rights defenders can fully participate in the political and social life of their respective countries.<sup>921</sup>

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<sup>915</sup> The IACHR understands that a human rights defender is any person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally. The sole criterion used to identify whether a person should be considered a human rights defender is the activity undertaken by that person, and not any other factors such as whether or not they are paid for their work or whether or not they belong to a civil society organization. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc.66, December 31, 2011 (hereinafter “IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011”), para. 12.

<sup>916</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 13.

<sup>917</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006 (hereinafter IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, 2006), para. 36.

<sup>918</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, 2006, cited in IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 16.

<sup>919</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 7.

<sup>920</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 128. This right is recognized also in Article 20.1 of the Universal Declaration of Human Rights; Article 21 of the International Covenant on Civil and Political Rights and Article 5 of 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

<sup>921</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 128.

333. The IACHR has stated that members of organizations that promote and defend the rights of LGBTI persons play a fundamental role in the region. This role manifests itself both in terms of public oversight — to ensure compliance with the States’ obligations — and, in general, in the process of furthering equality for LGBTI persons.<sup>922</sup> Since 2009, OAS Member States have committed, through six General Assembly Resolutions, to ensuring adequate protection for LGBTI human rights defenders.<sup>923</sup> In this section of the Report, the IACHR highlights some of the main obstacles that LGBTI defenders face in the Americas, discusses cases of killings and attacks on human rights defenders in various countries in the region, and examines the impact of these factors on the defense and promotion of the rights of LGBTI persons.
334. Human rights defenders who are advocating for the rights of LGBTI individuals face serious challenges in carrying out their work, including threats, attacks, and criminalization of their activities.<sup>924</sup> Special Procedures of the UN Human Rights Council have noted that LGBTI human rights defenders face great risks because their work “challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups.”<sup>925</sup> The UN Special Rapporteur on Torture has indicated that human rights groups and individuals who are active on issues of sexuality, sexual orientation, and gender identity, are often very vulnerable to prejudice, marginalization, and public repudiation, not only by State forces but also by other social actors.<sup>926</sup> The UN Special Rapporteur on Human Rights Defenders has expressed concern over continuing smear campaigns and violent threats against LGBTI human rights defenders.<sup>927</sup> The IACHR has received reports of acts of violence and hateful graffiti

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<sup>922</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 297; IACHR, Press Release No. 23/14, *IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas*, February 27, 2014.

<sup>923</sup> OAS General Assembly Resolutions: *Resolution AG/RES. 2504 (XXXIX-O/09), Human Rights, Sexual Orientation, and Gender Identity*, approved at the fourth plenary session, June 4, 2009. *Resolution AG/RES. 2600 (XL-O/10), Human Rights, Sexual Orientation, and Gender Identity*, approved at the fourth plenary session, June 8, 2010. *Resolution AG/RES. 2635 (XLI-O/11), Human Rights, Sexual Orientation, and Gender Identity*, approved at the fourth plenary session, June 7, 2011. *Resolution AG/RES. 2721 (XLII-O/12) Human Rights, Sexual Orientation and Gender Identity*, approved at the second plenary session, June 4, 2012. *Resolution AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression*, approved at the fourth plenary session, June 6, 2013. *Resolution AG/RES. 2863 (XLIV-O/14) Human Rights, Sexual Orientation, and Gender Identity and Expression*, approved at the fourth plenary session, June 5, 2014. All the Resolutions are available at the section entitled “links”, LGBTI Rapporteurship’s website at [www.iachr.org](http://www.iachr.org).

<sup>924</sup> IACHR, Press Release No. 57/14, *Joint Statement by UN Human Rights Experts, the IACHR, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples’ Rights and the OSCE Representative on Freedom of the Media, May 17 - International Day against Homophobia and Transphobia (IDAHO-T)*, May 15, 2014.

<sup>925</sup> United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, para. 25; *Report of the Special Representative of the Secretary-General on human rights defenders*, E/CN.4/2001/94, January 26, 2001, para. 89(g).

<sup>926</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 25.

<sup>927</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/13/22, 13th session, December 30, 2009, para. 49.

that target LGBT organizations,<sup>928</sup> as well as death threats sent via text messages to these human rights leaders.<sup>929</sup>

335. In this respect, the Commission observes that LGBT human rights defenders are more vulnerable to violence due to three factors. As this Report indicates, in the case of defenders who identify as LGBT, they are already vulnerable because of their sexuality, sexual orientation and/or gender identity. In addition, the IACHR underscores that human rights defenders who work to protect and promote the human rights of LGBT persons experience additional forms of vulnerability to violence because of their role as human rights defenders and because of the specific causes that they champion.<sup>930</sup> Human rights defenders who both identify as LGBT and who work to protect and promote the human rights of LGBT persons, experience alarming levels of vulnerability created by the intersection of their sexual orientation and gender identity, role as defenders and issues on which they work.<sup>931</sup>
336. Among the most vulnerable to violence are trans women who are human rights defenders and who also engage in sex work.<sup>932</sup> A regional report on the situation of trans women human rights defenders carried out by the Network of Trans Persons from Latin America (REDLACTRANS) pointed to a link between sex work, on the one hand, and activism regarding HIV and human rights, on the other hand.<sup>933</sup> Trans women in Latin America, especially those who engage in sex work, usually feel particularly concerned about HIV. This concern about HIV is often how trans women first come into contact with trans human rights organizations, because of the work such organizations do in the areas of HIV prevention and access to HIV programs.<sup>934</sup> One trans human rights defender in San Pedro Sula, Honduras, said that the police knew her because of her activism, and when she was spotted at night, she was arrested and subject to police abuse for “no reason.” Another trans human rights defender in Cali, Colombia, stated that the police “constantly ask us for identification when we’re working on the street, despite the fact that they know about our defense 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.”<sup>935</sup> According to REDLACTRANS, combining both activities clearly puts trans human rights defenders in a more vulnerable position because, although violence against them can happen anywhere and at any time of the day, the fact that they engage in sex

<sup>928</sup> See e.g., Emol, “*Movilh denuncia atentado homofóbico contra sede: Frontis fue rayado con fuertes epítetos*,” May 19, 2014 (Available only in Spanish).

<sup>929</sup> For example, since March 2014, an organization called Grupo Matizes in Piauí, Brazil, started receiving death threats through text messages. Further, the IACHR Rapporteur on the Rights of LGBTI Persons was informed in October 2014 by several LGBT and lesbian human rights leaders in Colombia that they received death threats via text messages.

<sup>930</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, paras. 325-337.

<sup>931</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, paras. 325-337.

<sup>932</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 27.

<sup>933</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 27.

<sup>934</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 27.

<sup>935</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 28.

work at night and on the street gives the police greater opportunities “to take action against them with impunity.”<sup>936</sup>

337. In 2011, the IACHR noted with concern an increase in the number of acts of aggression, harassment, threats, and campaigns to discredit waged by State and non-State actors alike against persons who defend the rights of LGBTI persons, compared to 2006, when the IACHR issued its first regional report on the situation of human rights defenders in the Americas.<sup>937</sup> Among the problems faced by LGBTI human rights defenders in particular, is that their work is not necessarily recognized as legitimate. This heightens the atmosphere of hostility toward, and condemnation of, the activities of these organizations.<sup>938</sup>
338. The IACHR has also received troubling information about acts of verbal and physical violence committed against LGBT human rights defenders by other groups in the context of the 45<sup>th</sup> OAS General Assembly in 2015.<sup>939</sup> Further, on June 2, 2014, various social commentators and activists for the rights of LGBTI persons alleged that they were attacked by security agents during a demonstration in front of the building where the 44<sup>th</sup> General Assembly of the OAS was taking place in Asuncion, Paraguay.<sup>940</sup>
339. The IACHR has affirmed that attacks on the lives of human rights defenders have a multiplier effect, which goes beyond the victim in question. When an assault is committed in reprisal for a defender's actions, it produces a chilling effect on those connected to the defense and promotion of human rights, which directly diminishes the possibilities of carrying out this activity.<sup>941</sup> The IACHR has reiterated that the killing of a LGBTI human rights defender, as for any human rights defender, instills fear both among those who defend and promote rights and those whose rights are promoted and defended, which serves to perpetuate the violations committed against vulnerable groups and their advocates.<sup>942</sup> The Inter-American Court has indicated that the fear caused by such violence “can directly reduce the possibility of human rights defenders exercising their right to perform their work.”<sup>943</sup> Organizations have stressed that killings of LGBT leaders have proved to be powerful deterrents of the activities of defenders in the region.<sup>944</sup> This fear is exacerbated by the impunity which such attacks usually enjoy; an

<sup>936</sup> REDLACTRANS et al., *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 28.

<sup>937</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 328.

<sup>938</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 335.

<sup>939</sup> Information sent by the Coalition of LGBTTTI Organizations working within the framework of the OAS, June 2015 (on file with the IACHR Executive Secretariat).

<sup>940</sup> Sindicato de Periodistas del Paraguay. “*Repudio a la represión de periodistas y grupos de LGTBI en Paraguay*” June 5, 2014. (Available only in Spanish); Somos Gay Paraguay. *Violenta represión a activistas LGBT y periodistas frente a la OEA en Paraguay*, June 2, 2014; El Mundo. *Violenta represión policial ante la marcha gay en Paraguay*, June 3, 2014.

<sup>941</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 25.

<sup>942</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 331.

<sup>943</sup> I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96; *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 78.

<sup>944</sup> Colombia Diversa, “*Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*,” 2013, pp. 19 a 20.

impunity that only serves to perpetuate such human rights violations.<sup>945</sup> The IACHR has observed that when human rights defenders bring cases to court, especially ones related to attacks or killings of LGBT persons, the threats against them intensify.<sup>946</sup>

340. Moreover, the attacks on the lives of human rights defenders also have society-wide consequences. The Commission notes that the same fear that discourages other human rights defenders also sends “an intimidating message to society as a whole, putting it in a defenseless situation.”<sup>947</sup> The chilling effect reaches the individual people and discourages victims from filing denunciations, claims and grievances for human rights violations, reinforcing the impunity that perpetuates the violence.<sup>948</sup>
341. Regarding killings of LGBT human rights defenders, the IACHR has identified that there are serious problems with their investigation, mainly because many attacks against LGBT human rights defenders take place within a generalized context of violence against persons with non-normative sexual orientations and gender identities. This makes it difficult to ascertain whether the killing was committed because of his or her work defending human rights, or because of his or her sexual orientation or gender identity. The failure on the part of the authorities to conduct a diligent and exhaustive investigation, which considers all relevant theories of the crime and thus establishes whether or not the motive for the crime was the victim’s promotion and defense of human rights, or his or her sexual orientation and gender identity, remains a serious problem.<sup>949</sup>
342. During the last years, the Commission has granted eleven precautionary measures to protect defenders of LGBTI persons in Belize,<sup>950</sup> Honduras,<sup>951</sup> Jamaica,<sup>952</sup> Mexico,<sup>953</sup> and Guatemala.<sup>954</sup> In February 2014, the Commission issued a press release expressing its concern about the worrying number of attacks against LGBTI organizations and their members that took place between October 2013 and

<sup>945</sup> IACHR, Press Release No. 23/14, *IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas*, February 27, 2014.

<sup>946</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para 333.

<sup>947</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 21.

<sup>948</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 21.

<sup>949</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 297.

<sup>950</sup> IACHR, *Precautionary Measure 155/13: Caleb Orozco*, Belize, granted on May 29, 2013.

<sup>951</sup> IACHR, *Precautionary Measure 457/13: Members of “Asociación para una Vida Mejor de Honduras” (APUVIMEH)*, Honduras, granted on February 22, 2014; IACHR, *Precautionary Measure 18/10: Indyra Mendoza Aquilar et al.*, Honduras, granted on January 29, 2010; *Precautionary Measure 196/09 Amplification of Precautionary Measures*, Honduras; *Precautionary Measure 210/08 Marlon Cardoza and other members of the CEPRES Association*; IACHR, *Precautionary Measure 621/03: Ellyn Johalby Suárez Mejía and Members of the Comunidad Gay Sampedrana*, Honduras, granted on September 4, 2003. See summaries of these precautionary measures at [www.iachr.org](http://www.iachr.org).

<sup>952</sup> IACHR, *Precautionary Measure 153/11: X. & Z.*, Jamaica, granted on September 21, 2011; IACHR, *Precautionary Measure 80/11: Maurice Tomlinson*, Jamaica, granted on March 21, 2011.

<sup>953</sup> IACHR, *Precautionary Measure 222/09: Agustín Humberto Estrada Neqrete y otras*, Mexico, granted on April 7, 2010.

<sup>954</sup> IACHR, *Precautionary Measure 3/06: Kevin Josué Alegría Robles and members of OASIS*, Guatemala.

January 2014 in the Americas, making reference to serious incidents in Haiti, Honduras, Nicaragua, Chile, and Peru.<sup>955</sup>

343. With respect to Brazil, the IACHR was informed of the June 21, 2009 killing of Gabriel Henrique Furquim,<sup>956</sup> a member of the Dignity Group for the Defense of the Rights of Gay Persons and of the Brazilian Association of Gays, Lesbians, Bisexuals and Trans Persons,<sup>957</sup> and the November 23, 2010 murder in Jacareí of Iranilson Nunes Da Silva, a member of the organization *Revida*.<sup>958</sup> In June 2014, the IACHR was informed that a group called “Irmandade Homofóbica” had issued serious threats against LGBT human rights defenders in the state of Piauí, Brazil, through pamphlets, text messages, and messages through social media sites. The IACHR sent a letter to the State of Brazil on July 9, 2014 requesting information on the measures adopted to investigate threats against Marinalva de Santana Ribeiro, a lesbian human rights defender and founder of the LGBT organization *Grupo Matizes* in Teresina, Piauí. The State of Brazil responded to the request and noted the measures adopted to investigate the threats, as well as the State’s inclusion of de Santana Ribeiro in the national program for the protection of human rights defenders, in order to protect her from the attempted violence and provide her with psychological treatment.<sup>959</sup>
344. Regarding Colombia, the IACHR has regularly received information regarding killings of LGBT human rights defenders in various parts of the country. In 2009, a trans woman<sup>960</sup> and a gay man<sup>961</sup> were killed. Both had been LGBT human rights defenders who had publicly denounced instances of violence, including police abuse. In 2010, four lesbian leaders were killed within days of each other in the region of Antioquia<sup>962</sup> and Medellín,<sup>963</sup> as was a gay political leader in Córdoba.<sup>964</sup>

<sup>955</sup> IACHR, Press Release 23/14, *IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas*, February 27, 2014.

<sup>956</sup> Referenced in IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 332.

<sup>957</sup> Grupo Gay Da Bahia, “*Militante de grupo gay é assassinado em Curitiba*”, Redação Bem Paraná, June 22, 2009 (Available only in Portuguese).

<sup>958</sup> Infoglobo Extra, “*Jacareí: homem morto com 12 tiros recebia ameaça*,” November 25, 2010 (Available only in Portuguese); Acapa, “*Homossexual morre com 12 tiros em Jacareí; polícia suspeita de homofobia*,” November 25, 2010 (Available only in Portuguese).

<sup>959</sup> Mission of Brazil before the OAS, Letter No. 186, dated July 31, 2014.

<sup>960</sup> Wanda Fox, a Colombian trans woman leader, was killed in 2009 after she publicly denounced the harassment trans women suffered from local police officers. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos et. al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 44.

<sup>961</sup> The UN Special Rapporteur reported the emblematic case of Alvaro Miguel Rivera Linares, an LGBT and HIV/AIDS activist who was found dead in his flat on March 6, 2009. “His body bore marks of torture. (...) Mr. Rivera Linares had denounced the general violence against the LGBT population in Cali, including alleged abuses and arbitrary detention by police officers. In 2001, he received threats because he denounced the practice of guerilla members of testing the population for HIV/AIDS and ostracizing people who tested positive.” *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Colombia*, A/HRC/13/22/Add.3, March 4, 2010, para. 50.

<sup>962</sup> Killings of Cruz Elena Rojo Peña and Nedys Yuleny Roldán Sánchez Colombia Diversa, “*Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*”, 2013, p. 23.

In 2011, a trans leader was killed in Pasto after receiving numerous death threats. Further, the IACHR received information about the killing on July 23, 2013 of Wizy Romero, a 21-year-old trans woman known because of her leadership of the LGBTI movement in Barranquilla.<sup>965</sup> Additionally, Guillermo Garzón Andrade, founder of *Somos Opción LGBT*, was murdered in November 2014. His body was found gagged and with signs of brutal wounds inflicted with a bladed weapon.<sup>966</sup>

345. At the conclusion of her visit to Colombia in October 2014, Commissioner Tracy Robinson noted having received information regarding threats by armed groups against LGBT persons, defenders, and activists, including through text messages and pamphlets. Further, she expressed concern about claims that the domestic mechanisms of protection are not effective in safeguarding the lives and personal integrity of LGBT community leaders and activists who do not fall under the established definition of “defenders.”<sup>967</sup> According to civil society organizations, armed groups specifically target LGBT persons and LGBT human rights defenders.<sup>968</sup> The IACHR was also troubled by information regarding the impact of violence perpetrated by armed actors against LGBT rights defenders and leaders, in particular trans women leaders, in the Caribbean region of Colombia.<sup>969</sup> For example, the IACHR received information that between 2011 and 2014, six trans women were murdered in La Guajira and Sucre. It is thought that the killers were members of criminal groups that exercise territorial control in the area. Four of the victims were leaders of the Global Fund to Fight AIDS.<sup>970</sup> On January 9, 2015, *Corporación Caribe Afirmativo* reported the murder of 35-year-old trans activist Camila Flores, who had been a leader of the organization *Mecanismo Coordinador de País* as well as of the Global Fund to Fight AIDS and had already been attacked with a firearm on March 9, 2014.<sup>971</sup> LGBT organizations in the region affirm that “the higher the visibility, the greater the risk.” They say that LGBTI persons are showing increasing leadership in the Caribbean region of Colombia and that this

<sup>963</sup> Colombia Diversa, “*Todos los deberes, pocos los derechos, Situación de los derechos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008-2009*,” p. 141; Caracol Radio, “*Piden investigar el asesinato de dos integrantes de la comunidad LGBT en Medellín*,” August 8, 2010 (Available only in Spanish).

<sup>964</sup> Killing of Yerys Tilson Díaz Páez, a gay political leader killed in November 2010. Colombia Diversa, “*Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*,” 2013, p. 23.

<sup>965</sup> This killing and another killing were included in the press release issued by the IACHR on acts of violence against LGBTI persons that took place during the month of July 2013. See IACHR, Press Release No. 60/13, *IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas*, August 15, 2013.

<sup>966</sup> Colombia Diversa, “*Activista LGBT fue brutalmente asesinado en Bogotá*,” November 18, 2014 (Available only in Spanish).

<sup>967</sup> IACHR, Press release No. 118/14 *IACHR Chair Concludes Visit to Colombia*, October 10, 2014.

<sup>968</sup> The IACHR has noted with concern the circulation of pamphlets containing death threats against LGBT defenders in Barrancabermeja, Department of Santander, and death threats against Ovidio Nieto from “Gente en Acción,” in 2013. IACHR, *Truth, Justice and Reparation: Colombia*, 2013, para. 994.

<sup>969</sup> IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 301.

<sup>970</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing *Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia*, held by the IACHR on October 27, 2014.

<sup>971</sup> Corporación Caribe Afirmativo, “*Asesinan a golpes a mujer trans en San Marcos, Sucre*,” January 9, 2015 (Available only in Spanish).

visibility in defense of the human rights of LGBTI persons has prompted a backlash of even more violence on the part of actors in the armed conflict.<sup>972</sup>

346. In the last few years, the IACHR has received troubling information regarding killings of trans human rights defenders and alleged acts of police abuse against trans human rights organizations and leaders in El Salvador. Francela Méndez, a 29-year-old trans woman and defender who was a member of the Salvadorian Human Rights Defenders Network, was killed on May 30, 2015.<sup>973</sup> Following her death, the IACHR affirmed that in the context of countries with high levels of insecurity and organized crime, it is particularly important for States to adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI persons, and defenders of the human rights of LGBTI persons, who are particularly vulnerable to violence by armed groups.<sup>974</sup>
347. In May 2013, Tania Vazquez, a trans woman leader of a trans organization in El Salvador, was killed.<sup>975</sup> According to information received by the IACHR in May 2015, there is an ongoing investigation, which has not yielded any results.<sup>976</sup> Following Vazquez's death, a local trans human rights organization called COMCAVIS denounced the police for entering their premises with a search warrant that made reference to COMCAVIS as a place where "illegal activities" and prostitution were conducted. Further, they denounced the aggressive way in which the police officers acted against members of the organization. The IACHR was also informed that on February 20, 2015, members of the police attempted to enter the premises of *Asociación Solidaria para Impulsar el Desarrollo Humano (ASPIDH-Arcoiris Trans)*, another trans human rights organization in El Salvador, without a warrant. Allegedly, members of the police insulted members of the organization using epithets related to their gender identity and expression. The IACHR sent a letter to the State requesting information on the measures being taken to investigate these acts of alleged abuse and to prevent further instances of police abuse against trans human rights defenders and organizations.<sup>977</sup> The State responded to this request informing the IACHR of different measures adopted by the State to prevent and address violence against trans persons, such as the Sexual

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<sup>972</sup> Corporación Caribe Afirmativo says that acts of violence against LGBTI persons in the Caribbean region of Colombia are mainly committed by criminal groups such as *Las Águilas Negras*, *Los Países*, *Los Urabeños*, *Los Nevados*, *Los Tayronas*, and *Los Rastrojos*, which chose not to apply for the benefits of the Justice and Peace Law, as well as by Fronts 19, 37 and 59 of the FARC, a number of holdouts of the National Liberation Army (ELN), and many demobilized members of the AUC. Corporación Caribe Afirmativo and Global Rights, written information submitted during the public hearing *Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia*, held by the IACHR on October 27, 2014.

<sup>973</sup> IACHR, Press Release No. 63/15, *IACHR condemns killing of human rights defender of trans persons in El Salvador*, June 8, 2015.

<sup>974</sup> IACHR, Press Release No. 63/15, *IACHR condemns killing of human rights defender of trans persons in El Salvador*, June 8, 2015.

<sup>975</sup> IACHR, *Public Hearing on Reports of Violence against Trans People in El Salvador*, 149<sup>th</sup> Period of Sessions, October 29, 2013. See also Asociación Solidaria para Impulsar el Desarrollo Humano (ASPIDH), "*Monitoreo y números de casos de homicidios contra la comunidad Trans y Gay*, 2013.

<sup>976</sup> Sin Etiquetas, "*Sin justicia: a Tania Vásquez la mataron en El Salvador hace dos años.*" May 4, 2015 (Available only in Spanish).

<sup>977</sup> IACHR, Letter requesting information sent to the State of El Salvador, on the basis of Article 41 of the American Convention, concerning the situation of ASPIDH-Arcoiris Trans, sent on April 27, 2015 (on file with the IACHR Executive Secretariat).

Diversity Unit within the Ministry of Social Inclusion, and the establishment of a Permanent Roundtable for the Human Rights of LGBTI persons within the Office of the Attorney General for the Defense of Human Rights. The State also indicated that the police department did not have any record of the complaint, but that given the information sent to the IACHR, an investigation of the police action was initiated.<sup>978</sup>

348. According to information received by the Commission, LGBTI human rights defenders in Haiti “are targets of serious assaults, harassment and threats.”<sup>979</sup> For example, a group of teenage peer counselors were attacked in July 2011 at a festival in central Haiti while conducting outreach on HIV prevention for gay men and men who have sex with men. A mob burned down their tent, chased them, and threatened to kill them.<sup>980</sup> In 2012, it was reported that members of an LGBTI organization were leaving a party when police officers on patrol got out of their car and proceeded to beat and harass them. The victims were heavily bruised and some sustained swollen and black eyes. Due to fear of reprisals, no one reported the assault.<sup>981</sup>
349. In 2013, the IACHR was informed of a spike in threats against *Kouraj* –a Haitian LGBTI organization-<sup>982</sup> following the announcement of a “March against Homosexuality” that was scheduled for July 26, 2013. Charlot Jeudy, Chair of *Kouraj*, has been targeted in some of the threats; he has also received anonymous calls accusing gay persons of causing the 2010 earthquake that killed 200,000 people in Haiti.<sup>983</sup> According to Amnesty International, on November 21, 2013, three men armed with machetes and handguns forced their way into the offices of *Kouraj* and threatened, beat, and tied up two of the organization’s members. Computers with sensitive information were stolen. It was reported that a justice of peace went to *Kouraj* to make a report, and that the organization’s members reported the incident to the police.<sup>984</sup>

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<sup>978</sup> The State of El Salvador sent the IACHR two letters responding to the request for information. El Salvador, *Fiscalía General de la República*, letter dated May 11, 2015, reference Of.FDH-77-15, Exp. FDH-021-2015; and El Salvador, Report on the situation of human rights defenders of ASPIDH-Arcoiris Trans, NV-95/2015, dated June 19, 2015, received June 22, 2015; both letters filed with the IACHR Executive Secretariat.

<sup>979</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 9.

<sup>980</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>981</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

<sup>982</sup> *Kouraj* works to raise awareness regarding the rights of LGBTI persons and to create public debate about the stigma surrounding homosexuality in Haiti. Other Worlds, *Amnesty International Alert: Support LGBTI Activists at Risk in Haiti*, July 19, 2013.

<sup>983</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

<sup>984</sup> Institute for Justice and Democracy in Haiti, *Urgent Action: LGBTI Organization in Haiti Attacked*, November 26, 2013.

350. Regarding Honduras, the IACHR was informed that at least 12 LGBT human rights defenders have been killed in Honduras between 2006 and 2013.<sup>985</sup> The IACHR has condemned killings of LGBT human rights defenders in Honduras, in 2009,<sup>986</sup> 2011,<sup>987</sup> and 2012.<sup>988</sup> In July 2013, the body of Herwin Chamorro Alexis Ramirez, 24-year-old trans woman and Afro-Honduran, was found with multiple gunshot and stab wounds. Herwin was a young leader, active in her community, who volunteered with organizations focused on HIV prevention and the rights of Afro-Honduran communities.<sup>989</sup> In its December 2014 visit to Honduras, the IACHR was informed that LGBT human rights defenders are constantly attacked and harassed by groups seeking to discriminate against them through violence. Reportedly, defenders of LGBT rights have been subject to arbitrary detentions by the police for posing a threat to “morals and good customs.” One trans woman human rights defender told the IACHR; “in Honduras, you’re criminalized for the simple fact of being trans, for being a human rights defender, for being part of this society.”<sup>990</sup> Another organization reported that out of the seven trans women who founded the organization *Colectivo Unidad Color de Rosa* in 2001, six have been killed, and out of the 27 trans women who were killed in Honduras between 2009 and 2012, 15 were activists from that organization.<sup>991</sup>
351. Amongst the most notorious cases in Honduras is the killing of 27-year-old Walter Trochez in December 2009.<sup>992</sup> Trochez was a human rights defender who had given testimony to the IACHR three months prior to his death, during the Commission’s 2009 onsite visit, and who had, following the *coup d’état*, begun compiling information on the killings of LGBT persons in Honduras.<sup>993</sup> A few days prior to his killing, he had allegedly been kidnapped by four masked men in civilian clothes who beat him, ordered him to divulge the names and addresses of other

<sup>985</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Catrachas, (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 26.

<sup>986</sup> IACHR, Press Release No. 3/09, “[IACHR condemns murder of human rights defender in Honduras](#),” February 6, 2009 [condemning the killing of Cynthia Nicole].

<sup>987</sup> IACHR, Press Release No. 4/11, “[IACHR deeply concerned about murders of members of transgender community in Honduras](#),” January 10, 2011 [condemning the killings of seven trans persons in Honduras which occurred between November 2010 and January 2011, and also making reference to the killings of LGBT human rights defenders: Neraldys Perdomo, Imperia Gamaniel Parson and Walter Trochez, among others].

<sup>988</sup> IACHR, Press Release No. R46/12, [Office of the Special Rapporteur of Freedom of Expression, the Rapporteurship on Human Rights Defenders and the Unit for the Rights of LGBTI Persons Condemn Murder of Journalist and LGBTI Activist in Honduras](#), May 11, 2012 [condemning the killing of Eric Alex Martínez Ávila].

<sup>989</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

<sup>990</sup> IACHR, Press Release No. 146A/14, [Preliminary Observations concerning the Human Rights Situation in Honduras](#), December 5, 2014.

<sup>991</sup> REDLACTRANS *et al.*, [The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America](#), 2012, pp. 28-29.

<sup>992</sup> *Report of the Special Rapporteur on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received*, A/HRC/16/44/Add.1, February 28, 2011, paras. 997-1000; *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1, December 13, 2012, para. 91; Huffington Post, [The Murder of Walter Trochez: Political Violence and Impunity in Honduras](#), December 13, 2010.

<sup>993</sup> Huffington Post, [The murder of Walter Trochez: political violence and impunity in Honduras](#), December 13, 2010.

activists,<sup>994</sup> and told him “we have orders to kill you.”<sup>995</sup> In March 2015, a criminal court in Tegucigalpa handed down a sentence acquitting a friend of Trochez who had been accused of killing him, and who had been in pretrial detention for two years, during the course of which, he was allegedly raped several times due to his sexual orientation.<sup>996</sup> The civil society organization *Red Lésbica Cattrachas* alleged that Trochez’s friend (who was later acquitted) was in Mexico with his mother when Trochez was killed, and that he was a scapegoat, intended to cover-up the alleged involvement of the police in Trochez’s murder. The State, in turn, has denied any police involvement.<sup>997</sup> The organization *Red Lésbica Cattrachas* has indicated that this case is emblematic of the impunity surrounding cases of killings of LGBT persons, and that the investigation conducted was deficient since it did not take into account Trochez’s activities as a human rights defender, and instead depicted Trochez’s killing as a “crime of passion,” because of his sexual orientation.<sup>998</sup>

352. Mexican organizations have informed the IACHR about several assassinations of LGBT human rights defenders.<sup>999</sup> Amongst the most notorious are the 2011 killing in the city of Chilpancingo, Guerrero, of Quetzalcóatl Leija Herrera, president of the Center for Studies and Projects for Integral Human Development (CEPRODEHI),<sup>1000</sup> and the killing of Agnes Torres Sulca, a trans woman human rights defender, whose burnt body was found on March 10, 2012 in Puebla.<sup>1001</sup> According to media reports, four men confessed to having killed Torres Sulca.<sup>1002</sup> In 2014, Edgar Sosa Meyemberg, a gay teacher and reproductive rights activist, was found dead with clear signs of torture and his skull destroyed by a blunt object.<sup>1003</sup>
353. In 2004, Brian Williamson, co-founder of the organization Jamaican Forum for Lesbians, All-sexuals and Gays (J-Flag), was found murdered in his home. He was

<sup>994</sup> IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras*, May 15 to 18, 2010, para. 53.

<sup>995</sup> Huffington Post, *The murder of Walter Trochez: political violence and impunity in Honduras*, December 13, 2010, citing Amnesty International.

<sup>996</sup> Red Lésbica Cattrachas, Comunicado: *“Sentencia Absolutoria del acusa por homicidio de Walter Trochez”* March 24, 2015 (Available only in Spanish).

<sup>997</sup> Huffington Post, *The murder of Walter Trochez: political violence and impunity in Honduras*, December 13, 2010.

<sup>998</sup> Red Lésbica Cattrachas, Comunicado: *“Sentencia Absolutoria del acusa por homicidio de Walter Trochez”*, March 24, 2015 (Available only in Spanish).

<sup>999</sup> Agenda LGBT A.C., *“Informe de la situación de homofobia en México del año 2013,”* February 2013, p. 5; Notiese, *“Asesinan a Activista gay en Chilpancingo.”* May 4, 2011 (Available only in Spanish). Notiese, *“Asesinan a Activista Gay en DF.”* July 24, 2011 (Available only in Spanish). Revista Proceso, *“Investigan asesinato de abogado transexual; era agente del MP en el DF,”* June 8, 2013 (Available only in Spanish).

<sup>1000</sup> IACHR, Press Release No. 42/11, *IACHR Condemns Murder of LGBTI Rights Activist in Mexico*, May 10, 2011.

<sup>1001</sup> IACHR, Press Release No. 32/12, *IACHR Condemns Murder of Human Rights Defender in Mexico*, March 20, 2012. Revista Proceso, *“Asesinan a Agnes Torres, Activista Transgénero,”* March 12, 2012 (Available only in Spanish).

<sup>1002</sup> El Sol de Puebla, *“Presentan a los presuntos asesinos de la activista Agnes Torres Hernández; hay un prófugo,”* March 18, 2012 (Available only in Spanish).

<sup>1003</sup> Notiese, *“Exigen esclarecer homicidio del activista Edgar Sosa,”* May 13, 2014 (Available only in Spanish); La Jornada Jalisco, *“Marchan para visibilizar a las víctimas de la homofobia en Jalisco,”* May 2014 (Available only in Spanish).

- stabbed 70 times and his body was mutilated.<sup>1004</sup> Within an hour after the discovery of his body, a Human Rights Watch researcher witnessed a crowd gather outside his home, some of the members of which were reportedly chanting, “that’s what you get for sin,” and “let’s kill all of them.”<sup>1005</sup> Williamson’s killer confessed and received 25 years in prison, with the possibility of parole after 15 years.<sup>1006</sup> On February 14, 2007, in Kingston, a group of gay men including gay-rights activist Gareth Williams were stoned by a mob of over 2,000 people when they were shopping in a mall. The IACHR received information that the police failed to arrest anyone for the attack and instead took the gay men into custody and subsequently abused them even as they sought to secure them from the mob.<sup>1007</sup>
354. The IACHR has received reports that LGBT organizations in The Bahamas<sup>1008</sup> and Dominica<sup>1009</sup> are afraid to conduct human rights defense work because of generalized violence against LGBT persons in these countries. In Saint Lucia, one of the leaders of the organization *United & Strong* informed the IACHR about several death threats that she has received, including one instance in which two men threatened to kill her if she did not stop her work. The offices of *United & Strong* have also been burned down. The case is reportedly still under investigation.<sup>1010</sup> According to the information received, participation in strategic litigation before national courts in the Anglophone Caribbean region against laws and regulations which discriminate against, or have negative effects on, LGBT persons, has exposed human rights defenders to worrying levels of violence, including death threats, intimidation, and violent attacks. In Belize, gay activist Caleb Orozco has received numerous death threats after he brought a challenge against the buggery law in the Supreme Court.<sup>1011</sup>
355. States have specific obligations to protect human rights defenders and the defense of human rights, including the duty to: provide the necessary means for human rights defenders to conduct their activities freely; protect them when they are subject to threats in order to ward off any attempt on their life or safety; refrain from placing restrictions that would hinder the performance of their work; and conduct serious and effective investigations of any violations against them, thus

<sup>1004</sup> The Jamaica Gleaner, *Remembering Brian Williamson*, June 9, 2011.

<sup>1005</sup> HRW, *Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic*, November 2004, Vol. 16, No. 6(B), p. 2.

<sup>1006</sup> Jamaica Cleaner, *Gay Rights activist’s killer gets life*, May 21, 2006.

<sup>1007</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, Report submitted to the IACHR in November 2010, p. 31.

<sup>1008</sup> The Bahama Journal, *Gay Activist Fears Violence*, September 2, 2014; Tribune 242, *‘I Have Been Discriminated Against For My Sexuality’*, June 12, 2013; The Nassau Guardian, *Death Threats over GB gay pride event*, September 1, 2014.

<sup>1009</sup> Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative, *Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Dominica for the 19<sup>th</sup> Session of the Universal Periodic Review*, May 2014, para. 17.

<sup>1010</sup> The Star Newspaper, *Gays Say ‘We Are Here to Stay’*, March 8, 2012.

<sup>1011</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

preventing impunity.<sup>1012</sup> States should also undertake measures to support recognition of the important role that these defenders play in the protection and defense of human rights.<sup>1013</sup>

356. The IACHR has also affirmed that States must not tolerate any attempt by public officials to question the legitimacy of the work of human rights defenders and their organizations.<sup>1014</sup> Public officers must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations are acting illegally or improperly, simply due to the fact that they work in the promotion and protection of human rights.<sup>1015</sup> Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.<sup>1016</sup> Finally, States are called on to guarantee the security of human rights defenders who are especially vulnerable by adopting specific measures of protection based on the activities of those defenders and the risks they routinely encounter.<sup>1017</sup>

## ***F. Afro-descendant Persons and other Persons Who are Affected by Racial Discrimination***

357. The IACHR has received troubling information concerning the high levels of discrimination and violence against lesbian, gay, bisexual, and trans (LGBT) persons of African descent in the Americas.<sup>1018</sup> To date, such information has been limited to specific countries, such as Brazil, Colombia, Nicaragua, and the United States, as explained below. The Commission has received information regarding violence against LGBT persons in Commonwealth Caribbean countries, where a large percentage of the population is Afro-descendant. However, as explained by the IACHR Rapporteur on Afro-descendants and against Racial Discrimination, “in Caribbean countries where populations tend to have majority Afro-descendant populations, the problem of race is more complex and more subtle.” In this regard, Commissioner Antoine noted that “while there is less overt racism in the

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<sup>1012</sup> I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits. Reparations and Costs. Judgment of April 3, 2009. Series C No. 196*, para. 45. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 28.

<sup>1013</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, p. 233, recommendation No. 11.

<sup>1014</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, p. 232, recommendation No. 5.

<sup>1015</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, p. 232, Recommendation No. 5.

<sup>1016</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, p. 232, recommendation No. 5.

<sup>1017</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, p. 233, recommendation No. 11.

<sup>1018</sup> IACHR, Press Release No. 31/15, *IACHR Calls on OAS Member States to Bring an End to Racial Discrimination in the Americas*, March 20, 2015. The IACHR has yet to receive information regarding intersex persons of African descent.

Caribbean countries, indirect discrimination remains a problem, in addition to strong structural paradigms that exacerbate inequality between the races.”<sup>1019</sup>

358. In the context of geographic areas where the afro-descendant population is not a minority, like the Caribbean, the IACHR also considers how persons of African descent can face discrimination depending on the darkness of the person’s skin<sup>1020</sup> -a concept referred to as “colorism.”<sup>1021</sup> The Commission notes how the darker the person’s skin is, the fewer opportunities of personal and economic development they may have, reflecting the impact of the colonial past.<sup>1022</sup> Thus, in areas like the Caribbean, racial discrimination towards afro-descendant people is linked to the darkness of the skin, poverty, and the control of economic resources.<sup>1023</sup> Bearing this in mind, persons of African descent with non-normative sexual orientations and gender identities can face violence and discrimination based on their race, ethnicity, gender, sex, sexual orientation, darkness of skin and/or situation of poverty, which can be exerted by persons not of African descent and persons of African descent.
359. The IACHR has noted how, given the close link between race, socio-economic class, and poverty, the Afro-descendant population is adversely affected by multiple levels of discrimination.<sup>1024</sup> Additionally, the Commission has expressed concern about the special vulnerability of Afro-descendant women, who have suffered triple historical discrimination based on their sex, gender, extreme poverty, and race.<sup>1025</sup> In this respect, the IACHR points out how afro-descendant women face discrimination within their own communities based on their sex. The Commission received information referencing the phenomena of “hypermasculinity” or “reinforced male chauvinism” by some Afro-descendant men.<sup>1026</sup> Such attitudes can result in the limitation of Afro-descendant women’s access to education and work and perpetuate the subordination of women,<sup>1027</sup> which is exacerbated in the case of afro-descendant women with non-normative sexual orientations and gender identities. As a writer and activist in the United States explained, “trans women are targeted because we exist at vulnerable intersections of race, gender, and class.”<sup>1028</sup>
360. In a public hearing held in October 2014, the IACHR received information regarding the particular vulnerability to violence, in the context of armed conflict in Colombia, of LGBT persons who are Afro-descendants (in this case, the information concerned Afro-descendant populations known locally as *palenqueros*

<sup>1019</sup> IACHR, Press Release No. 31/15, [IACHR Calls on OAS Member States to Bring an End to Racial Discrimination in the Americas](#), March 20, 2015.

<sup>1020</sup> IACHR, [The Situation of People of African Descent in The Americas](#), OEA/Ser.L/V/II, Doc. 62, December 5, 2011 (hereinafter “IACHR, [The Situation of People of African Descent in The Americas](#), 2011”), paras. 99-100.

<sup>1021</sup> OAS, Press Release No. 144/15, [OAS Permanent Council Celebrated the Launch of the International Decade for People of African Descent](#), April 22, 2015.

<sup>1022</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, paras. 99-100.

<sup>1023</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, paras. 99-100.

<sup>1024</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, paras. 13, 59.

<sup>1025</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, para. 13.

<sup>1026</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, para. 69.

<sup>1027</sup> IACHR, [The Situation of People of African Descent in The Americas](#), 2011, para. 69.

<sup>1028</sup> Mock, Janet. [A Note on Visibility in the Wake of 6 Trans Women’s Murders in 2015](#), February 16, 2015.

and *raizales*).<sup>1029</sup> The civil society organization *Caribe Afirmativo* reported that since 2007 there have been 114 violent deaths of LGBT persons in the Caribbean region of Colombia, of which 58 have occurred in areas of armed conflict (*Serranía del Perijá, Montes de María, Golfo de Morrosquillo, La Mojana Sucreña, Bolívar, south of Cesar and Momposina*). The victims were mainly trans women and gay men, and were mostly persons who identified as, or were recognized as living in areas mostly populated by, people of African descent (otherwise known as *negras, palenqueras, or raizales*).<sup>1030</sup> In particular, the Commission was informed of the case of “Alias el Oso,” a member of a Colombian paramilitary group, who ordered the torture of gay men, especially those who were “effeminate,” and of Afro-descendants. The torture was to be carried out in the homes of the victims, and was intended to terrorize the population. The victims were subsequently forced to leave their communities.<sup>1031</sup> The information provided to the IACHR indicates that, in the context of the civil conflict in Colombia, LGBT Afro-descendants are victims not only of guerrilla groups, but also of criminal groups (*BACRIM*).<sup>1032</sup> With respect to Afro-Colombian lesbian women, for example, in addition to the triple discrimination they face on the grounds of sex, ethnicity, and poverty, the IACHR was informed that lesbian Afro-descendant women also face violence because of their sexual orientation, including so called “corrective rape.”<sup>1033</sup> During her visit to Colombia in October 2014, Rapporteur Tracy Robinson received the testimony from three lesbian Afro-descendant women who were raped by different armed groups as a form of punishment due to their sexual orientation, and who were, as a consequence, internally displaced.<sup>1034</sup> These testimonies indicated that the rapes were committed with high levels of brutality, cruelty and physical violence, in addition to the reiterated and prolonged verbal humiliation about their sexual orientation.

361. According to the National Human Rights Institution of Nicaragua (*Procuraduría para la Defensa de los Derechos Humanos*), LGBT persons from Creole communities face greater risk of discrimination and violence both on the basis of ethnic origin and on the basis of sexual orientation and/or gender identity. Debasement, humiliation, and instances of stoning of LGBT persons from Creole communities have been reported in the city of Bilwi on the Atlantic coast of Nicaragua.<sup>1035</sup>
362. In the United States, several organizations have reported that Afro-descendant LGBT persons suffer high levels of violence, particularly Afro-descendant trans

<sup>1029</sup> Caribe Afirmativo - Global Rights, *Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno*, October 2014, pp. 7-8.

<sup>1030</sup> IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, May 7, 2015, para. 293.

<sup>1031</sup> IACHR, Public Hearing on *Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia*, 153<sup>rd</sup> Period of Sessions, 27 October 2014.

<sup>1032</sup> Caribe Afirmativo - Global Rights, *Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno*, October 2014, pp. 16.

<sup>1033</sup> IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 248, May 7, 2015.

<sup>1034</sup> IACHR, Press Release No. 118/14, *IACHR Chair concludes visit to Colombia*, October 10, 2014.

<sup>1035</sup> Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Nicaragua], *Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional*, March 2012, p. 22.

women, as do trans women of color more generally.<sup>1036</sup> For example, according to the National Coalition of Anti-Violence Programs (NCAVP), a non-profit organization, 55% of the killings of lesbian, gay, bisexual, trans and queer (hereinafter “LGBTQ”) persons in 2014 targeted trans women, and 50% of the killings of LGBTQ persons in 2014 targeted trans women of color.<sup>1037</sup> Further, 80% of all LGBTQ homicide victims in 2014 were persons of color.<sup>1038</sup> According to the NCAVP, this trend of disproportionate impact of deadly violence on LGBTQ persons of color, and particularly trans women of color, has persisted every year since 2009.<sup>1039</sup> For example, in 2013, the NCAVP reported that almost 90% of all LGBTQ homicide victims were people of color, 72% of all LGBTQ homicide victims were trans women, and 67% of all LGBTQ homicide victims were trans women of color.<sup>1040</sup> Regarding intimate partner violence, the IACHR has been informed that LGBTQ persons of color are more likely to experience violence perpetrated by their intimate partners, and are more likely to experience intimate partner violence that occurs in public.<sup>1041</sup> Further, persons of color living with HIV, and lesbian, gay, and bisexual persons of color, are at least twice as likely as white persons to report experiencing abusive treatment by medical specialists.<sup>1042</sup>

363. With respect to alleged instances of abuse by law enforcement agents in the United States, the IACHR has received information indicating that LGBT persons of color are at higher risk of being subjected to police abuse, due to both violence motivated by race and violence motivated by sexual orientation and/or gender identity. For example, one study in the United States found that compared to white cisgender persons, trans persons of color are six times more likely to experience physical violence at the hands of the police.<sup>1043</sup> Further, the Commission has received troubling information regarding neighborhoods in certain U.S. cities with a large presence of persons of color (and, by implication, LGBTQ persons of color) that are disproportionately impacted by racial profiling, harassment, and violence

<sup>1036</sup> Human Rights Campaign, Research Overview: Hate Crimes and Violence against Lesbian, Gay, Bisexual and Transgender People, United States, 2009, p. 39.

<sup>1037</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition*, 2014.

<sup>1038</sup> According to the U.S.-based professor Salvador Ortiz, the term *persons of color* collectively refers to various racial and ethnic minority groups, and is frequently used in contemporary popular, activist, and academic debates, mostly in the United States. This term is slowly replacing terms such as *racial and ethnic minorities*. *People of color* is considered to be an all-inclusive term that encompasses African Americans, Latinos, Latinas, Asians and Pacific Islanders, and Native Americans. Vidal-Ortiz, Salvador. 2008. “People of Color.” Pp. 1037-1039 in *Encyclopedia of Race, Ethnicity, and Society*, Richard T. Schaefer, editor. Sage Publications, at pp. 1037-1038. National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition*, 2014.

<sup>1039</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition*, 2014.

<sup>1040</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition*, 2014.

<sup>1041</sup> National Coalition of Anti-Violence Programs, *Media Alert, An Open Letter from LGBTQ Organizations in the United States Regarding the Epidemic Violence that LGBTQ People, Particularly Transgender Women of Color, Have Experienced in 2015*, 1 March 2015.

<sup>1042</sup> Lambda Legal, *When Health Care Isn’t Caring: Lambda Legal’s Survey on Discrimination against LGBT People and People Living with HIV*, 2010, p. 12.

<sup>1043</sup> National Coalition of Anti-Violence Programs, *A Report of Lesbian, Gay, Transgender, Queer, and HIV-Affected Hate Violence in 2013*, 2014, p. 10.

perpetrated by the police.<sup>1044</sup> Trans persons of color have also reported being wrongfully profiled as sex workers, with the police using such persons' possession of condoms as evidence of involvement in sex work.<sup>1045</sup>

364. In Brazil, a country with a large Afro-descendant population (often referred to locally as *pretos* and *pardos*),<sup>1046</sup> Afro-descendants are especially vulnerable to violence based on prejudice against non-normative sexual orientations and gender identities.<sup>1047</sup> At a 2013 thematic hearing on the rights of Afro-descendant trans women in Brazil, the Commission received troubling information regarding the high level of violence and excessive use of force against, and numerous cases of arbitrary detention and torture of, Brazilian trans people of African descent.<sup>1048</sup> According to the State, in 2011, 41% of LGBT victims of violence self-identified as Afro-descendants (*pretos* and *pardos*), in comparison with 27% of LGBT victims of violence who self-identified as white persons.<sup>1049</sup> That being said, one civil society organization indicated that, even though the State does gather data on violence against LGBT persons, and such data-gathering includes important demographic indicators such as sexual orientation, gender identity, age, and geographical region, there is minimal information collected regarding the racial identity of LGBT victims of violence. In particular, there is no racial breakdown within the separate categories of lesbian, gay, bisexual, or trans, within the overall category of "LGBT persons".<sup>1050</sup>
365. The IACHR has also received information concerning the significant social and economic inequalities faced by Afro-Brazilian trans women, including limited access to health services, little or no access to state benefits and to government programs at the local and federal level, and high levels of illiteracy. It is reported that an estimated 90% of trans women in Brazil are functionally illiterate due to social exclusion.<sup>1051</sup> During a public hearing before the IACHR, the State of Brazil described different measures that it had been using to address violence against LGBT persons, including the 2012 National Report on "Homophobic Violence." This report, which gathered data regarding the race of LGBT victims, demonstrated that most LGBT victims of violence in Brazil are young Afro-descendants. The State emphasized the coordinated work to address violence against LGBT persons that

<sup>1044</sup> Make The Road New York. *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, October 2013, p. 4.

<sup>1045</sup> Make The Road New York. *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, October 2013, p. 4.

<sup>1046</sup> The 2010 Census in Brazil, was the first census in which the majority of the Brazilian population self-identified as other than Caucasian or white. See Oglobo "Censo 2010: população do Brasil deixa de ser predominantemente branca" November 3, 2011.

<sup>1047</sup> State of Brazil. Secretaria de Direitos Humanos, *Relatório sobre violência homofóbica no Brasil: ano de 2011, 2012*, p. 114.

<sup>1048</sup> Global Rights and Rede Negra LGBT de Brazil. *Human rights situation of trans people of African descent in Brazil*, presented at a public hearing during the 149<sup>th</sup> Period of Sessions of the IACHR, October 29, 2013.

<sup>1049</sup> Government of Brazil, Ministry of Human Rights, *Relatório sobre violência homofóbica no Brasil: ano de 2011, 2012*, p. 25.

<sup>1050</sup> Global Rights Partners for Justice. *Report on the Human Rights Situation of Afro-Brazilian Transgender Women: "I Don't Want to Die Like This! Why Do People Have to Die Like This? Why Do We Have to Be Beaten and Stabbed to death?"* 2013, p. 16.

<sup>1051</sup> IACHR, Press Release No. 83/A, *Annex to the Press Release issued at the Close of the 149th Session*, November 8, 2013.

was being carried out jointly by the Presidency's Commission of Human Rights and the National Council against LGBT Discrimination. The State also highlighted the recommendations that had been issued by the Third National Program for Human Rights to various Brazilian states and municipalities. These recommendations concerned the establishment of services for the receipt of complaints of violence perpetrated against LGBT Afro-descendants, and the creation of specialized police units to address violence against vulnerable groups. The State also highlighted public education campaigns that were being undertaken to prevent violence against LGBT persons.<sup>1052</sup>

366. The IACHR reiterates the need for OAS Member States to adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and non-normative sexual orientation, gender identity and expression, as well as bodily diversity, affects LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.
367. The Commission considers it essential for States in the region to adopt effective measures to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons and those affected by racial discrimination. To that end, the States must collect disaggregated information, and allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Prevention efforts must be part of a comprehensive strategy to provide reparations regarding acts of violence and discrimination, as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.
368. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and other LGBTI persons affected by racial discrimination.

## **G. Persons Living in Poverty**

369. The IACHR notes that there is a strong link between poverty, exclusion, and violence. The UN Special Rapporteur on extreme poverty and human rights has indicated that "persons living in poverty are more likely to fall victim to criminal or illegal acts, including sexual or economic exploitation, violence, torture and murder."<sup>1053</sup> The Rapporteur has further stated that, for persons living in poverty,

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<sup>1052</sup> IACHR, *Public Hearing Human Rights of Afro-descendant trans persons in Brazil*, October 29, 2013.

<sup>1053</sup> *Report of the Special Rapporteur on Extreme Poverty and Human Rights, A/67/278*, August 9, 2012, para. 5.

“crime and illegality are also likely to have a great impact on their lives as it is hard for them to obtain redress and as a result they may fall further into poverty.”<sup>1054</sup> Further, the UN Office on Drugs and Crime has pointed out that there is “a consensus, both among scholars and the international community, that lethal violence is often rooted in contexts of paucity and deprivation, inequality and injustice, social marginalization, low levels of education and a weak rule of law.”<sup>1055</sup>

370. Structural discrimination against LGBTI persons may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination. The UN Special Rapporteur on extreme poverty and human rights has indicated: “patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination.”<sup>1056</sup> Moreover, the United Nations High Commissioner for Human Rights<sup>1057</sup> has stated that discrimination against LGBT persons is often exacerbated by other factors, such as poverty.<sup>1058</sup> Further, the OHCHR also cites studies undertaken in the Americas region that suggest that rates of poverty, homelessness, and food insecurity are higher among LGBT individuals.<sup>1059</sup> In addition, the World Bank has documented the negative impact of violence and discrimination based on prejudice (referred to as “homophobia”) on economic growth and development of countries.<sup>1060</sup>
371. LGBTI persons, especially trans persons and trans persons from racial minority groups,<sup>1061</sup> are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence. In Latin America, discrimination and structural exclusion in the labor market, based on sexual orientation, gender identity, and gender expression, is one of the triggers that “sets into motion an endless cycle of

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<sup>1054</sup> *Report of the Special Rapporteur on Extreme Poverty and Human Rights, A/67/278*, August 9, 2012, para. 5.

<sup>1055</sup> UNODC, *Global Study On Homicide: Trends, Contexts, Data*, Vienna, 2011. Citing Land, K., McCall, P.L. and Cohen, L.E., Structural Covariates of Homicide Rates: Are There Any Invariances Across Time and Social Space?, *American Journal of Sociology*, 1990; Tcherni, M., Structural Determinants of Homicide: The Big Three, *Journal of Quantitative Criminology*, 2011; Bourguignon, F., Crime As a Social Cost of Poverty and Inequality: A Review Focusing on Developing Countries, *Revista Desarrollo y Sociedad*, 2009.

<sup>1056</sup> U.N. *Report of the Special Rapporteur on Extreme Poverty and Human Rights, A/63/274*, August 13, 2008, para. 29.

<sup>1057</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23*, May 4, 2015, para. 42.

<sup>1058</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23*, May 4, 2015, para. 42, citing CRC/C/GC/15, para. 8, A/HRC/20/16, paras. 17, 23-27, A/HRC/26/50, para. 15, CEDAW/C/GC/28, para. 18.

<sup>1059</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23*, May 4, 2015, para. 42, citing Lucas Paoli Itaborahy, *LGBT people living in poverty in Rio de Janeiro*, (London, Micro Rainbow, 2014); and Gary J. Gates, “Food Insecurity and SNAP (Food Stamps) Participation in LGBT Communities,” Williams Institute, February 2014.

<sup>1060</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23*, May 4, 2015, para. 42, citing M.V. Lee Badgett, “The economic cost of stigma and the exclusion of LGBT People: a case study of India,” World Bank Group, 2014.

<sup>1061</sup> Open Society Foundations, *Transforming Health: International Rights-Based Advocacy for Trans Health*, 2013, p. 11.

continued poverty.”<sup>1062</sup> Further, as addressed earlier in this Report, persons at the intersection of having diverse sexual orientations and gender identities and being migrants face an increased risk of discrimination and violence, particularly persons who are forced to leave their countries, or who are internally displaced in their own countries, and who, as a consequence of their displacement, live in situations of poverty in their cities and countries of destination.

372. The IACHR has stated that discrimination and violence against children and young persons with non-normative sexualities and identities starts at home and in schools, where families, community members, teachers, and school administrators disapprove of their sexual orientation and/or gender identity.<sup>1063</sup> LGBT persons are expelled from their families and schools<sup>1064</sup> and in some instances cannot even obtain jobs paying minimum wage.<sup>1065</sup> As a result, LGBT persons often face poverty, social exclusion, and high rates of homelessness.<sup>1066</sup> This pushes them into the informal economy or into criminal activity.<sup>1067</sup> Some LGBT persons in such situations engage in sex work, or in survival sex,<sup>1068</sup> which is the exchange of sex for money, food, shelter, or other material goods needed for survival.<sup>1069</sup> As a result, LGBT persons living in poverty are vulnerable to police profiling and harassment, and consequently to higher rates of criminalization<sup>1070</sup> and imprisonment.<sup>1071</sup> One Colombian activist and academic indicates that some trans persons have even “budgeted” for time spent in jail, that is, have assumed that they will be incarcerated at some point in their lives.<sup>1072</sup>
373. Exclusion of trans persons from income-generating opportunities and social welfare programs results in high rates of poverty and unemployment, which

<sup>1062</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Humans Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 6.

<sup>1063</sup> IACHR, Press Release No. 49/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>1064</sup> IACHR, Press Release No. 49/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>1065</sup> Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>1066</sup> IACHR, Press Release No. 49/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>1067</sup> Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>1068</sup> Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>. See also Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, 2015.

<sup>1069</sup> Urban Institute, Research report, *“Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex”*, February, 2015.

<sup>1070</sup> Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>1071</sup> Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>1072</sup> Parra, Andrea. Guest speaker at *Decreto Trans: Retos e Implicaciones*, Sentiido, 2015 (Available only in Spanish).

frequently causes trans persons to turn to sex work.<sup>1073</sup> According to information received by the IACHR, 90% of trans women in Latin America and the Caribbean are engaged in sex work as their only means of subsistence<sup>1074</sup> and thereby face direct or indirect criminalization.<sup>1075</sup> Further, “regardless of socio-economic origins, a large number of trans women who are thrown out of their family homes at an early age end up among the high number of trans women who are severely impoverished most of their lives.”<sup>1076</sup> Trans women are often expelled from the family at early ages, engage in sex work when they are young, and face “a chronic lack of access to educational and health services, work opportunities and adequate housing.”<sup>1077</sup> Trans women who are involved in sex work often work, and even live, in the streets, where they face constant harassment, persecution, and threat of detention.<sup>1078</sup>

374. Several studies have shown that LGBT persons are more vulnerable to homelessness. In one Canadian study, 1 in 5 respondents to a survey of youth shelter occupants self-identified as LGBTQ (lesbian, gay, bisexual, trans or queer).<sup>1079</sup> In the United States, NGOs estimate that 20-40% of the homeless youth population is LGBT. These persons are at particularly high risk of being forced into prostitution.<sup>1080</sup> Similarly, the IACHR received information that approximately 40-50% of homeless youth living on the streets in New York City identify as LGBT. Reports indicate that most of them were expelled from their homes because of their sexual orientation or gender identity, or ran away to escape violence within their families.<sup>1081</sup>
375. The Commission identifies a close relationship between homelessness, sex work or survival sex, and violence. Youth in New York with diverse sexual orientations, gender identities, and gender expressions identified homelessness as one of the most common reasons for engaging in commercial sex. These youth also indicated that they would rather engage in survival sex than experience potential violence in

<sup>1073</sup> Baral, SD., Beyrer, C., and Poteat, T. *Human Rights, the Law, and HIV among Transgender People*. Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, July 7-9, 2011, p. 6.

<sup>1074</sup> Redlactrans, *Report on the Economic, Social and Cultural Rights of Transgender Population of Latin America and the Caribbean*, presented at a public hearing during the 154<sup>th</sup> Period of Sessions of the IACHR, March 16, 2015. Hearing requested by Redlactrans.

<sup>1075</sup> Redlactrans, *Report on the Economic, Social and Cultural Rights of Transgender Population of Latin America and the Caribbean*, presented at a public hearing during the 154<sup>th</sup> Period of Sessions of the IACHR, March 16, 2015. Hearing requested by Redlactrans.

<sup>1076</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Human Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

<sup>1077</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Human Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

<sup>1078</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Human Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 7.

<sup>1079</sup> Toronto City Council, Street Needs Assessment 2013: Results, 2014, p. 24.

<sup>1080</sup> US Department of State, Office to monitor and combat Trafficking in Persons, Trafficking in Persons Report 2014: *The Vulnerability of LGBT individuals to Human Trafficking*, 2014.

<sup>1081</sup> Funders for Lesbian and Gay Issues, Out for Change: Racial and Economic Justice Issues in Lesbian, Gay, Bisexual and Transgender Communities, 2005, p. 10.

youth shelters or foster care.<sup>1082</sup> According to one study, trans youth in New York City are eight times more likely to trade sex for a safe place to stay than are non-trans youth.<sup>1083</sup> The IACHR also notes that according to this same study, 48% of trans persons involved in sex work reported being homeless.<sup>1084</sup>

376. The IACHR has received troubling reports of persecution by police officers in Jamaica of homeless gay men and men who have sex with men.<sup>1085</sup> According to a civil society report, LGBT-identified youth in Jamaica comprise up to 40% of the country's homeless youth population.<sup>1086</sup> Another report indicates that a significant number of LGBT persons affected by violence in Jamaica "were from families in the [lower] socio-economic strata."<sup>1087</sup> It is reported that homelessness among LGBT persons "is almost always the result of discrimination or violence."<sup>1088</sup> LGBT persons are displaced from their homes, families, communities, and sometimes their country, by their families, landlords, and neighbors.<sup>1089</sup> The IACHR welcomes statements made by the Youth Minister of Jamaica, indicating that the government is developing programs focused on LGBT youth.<sup>1090</sup> At the Panos Caribbean Stakeholder Conference, the Minister acknowledged that stakeholder consultation was necessary and was being pursued in order to gain a better understanding of the issues facing LGBT youth, given the lack of data in this area.<sup>1091</sup> The Youth Minister acknowledged the State's duty not only to provide shelter and protection for abandoned and abused children, but also to provide therapeutic intervention to address the physical and psychological harm these children have suffered.<sup>1092</sup> The IACHR has praised a government-led response to

<sup>1082</sup> Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, 2015, p. 5. Citing New York City Association of Homeless and Street-Involved Youth Organizations (NYCAHSYO), *State of the City's Homeless Youth Report 2009*, New York, 2010.

<sup>1083</sup> Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, 2015, p. 5. Citing Freeman, Lance, and Darrick Hamilton. *A Count of Homeless Youth in New York City: 2007*, New York: Empire State Coalition of Youth and Family Services, 2008.

<sup>1084</sup> Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, 2015, p. 7. Citing Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>1085</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by International Human Rights Clinic at Santa Clara University School of Law (Study on Jamaica), November 25, 2013, received by IACHR on November 15, 2013, p. 1; Jamaica LGBT News, *Police Raid Homeless Gay Men*, YouTube (Oct. 18, 2013), <http://www.youtube.com/watch?v=4d2lCYwg5K0>.

<sup>1086</sup> Human Rights Watch, *Not safe at home: Violence and Discrimination against LGBT People in Jamaica*, 2014, p. 45, citing data provided by Caribbean Vulnerable Communities.

<sup>1087</sup> J-FLAG, *Homophobia and Violence in Jamaica*, 2013, p. 2.

<sup>1088</sup> J-FLAG, *(re)Presenting and Redressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach to Addressing Anti-Gay Related Displacement*, 2014, p. 2.

<sup>1089</sup> J-FLAG, *(re)Presenting and Redressing LGBT Homelessness in Jamaica: Towards a Multifaceted Approach to Addressing Anti-Gay Related Displacement*, 2014, p. 2.

<sup>1090</sup> Jamaica Gleaner, *Government To Develop Programmes For Homosexual Youth*, 2014.

<sup>1091</sup> Jamaica Gleaner, *Government To Develop Programmes For Homosexual Youth*, 2014.

<sup>1092</sup> Jamaica Gleaner, *Government To Develop Programmes For Homosexual Youth*, 2014.

assist LGBT youth,<sup>1093</sup> and stresses the paramount importance of the State referring the issue of homelessness to the National Committee on Homelessness, and including reference to the specific issues faced by homeless LGBT persons in that response.<sup>1094</sup>

377. Homelessness heightens the risk of LGBT persons being subjected to violence, including sexual violence. According to one source, homeless LGBTQ youth experience higher rates of physical and sexual assault and higher incidence of mental health problems, as well as unsafe sexual behaviors than heterosexual homeless youth. For example, it is reported that lesbian, gay, and bisexual homeless youth are twice as likely to attempt suicide as their heterosexual homeless peers.<sup>1095</sup>
378. The IACHR notes that LGBT persons experience discrimination and violence in homeless shelters and foster care group homes. The high rates of homelessness among LGBT persons are due in large part to the shelter systems being generally unsafe for LGBT persons.<sup>1096</sup> Further, the IACHR notes with concern that these institutions are usually segregated by gender (male or female), which increases violence and discrimination against trans persons and other gender non-conforming persons.
379. Poverty and exclusion also make LGBTI persons more vulnerable to violence in health care settings. As the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pointed out: “[s]tructural inequalities, such as the power imbalance between doctors and patients, exacerbated by stigma and discrimination, result in individuals from certain groups being disproportionately vulnerable to having informed consent compromised.”<sup>1097</sup> This has a specific and concrete impact on the lives of intersex persons and their families. For example, when intersex persons are born into impoverished families or to parents lacking access to formal education, the power imbalance that is normally present in the doctor-patient relationship tends to be exacerbated, with a consequent negative impact on intersex persons’ right to informed consent.<sup>1098</sup>
380. For example, the IACHR has received troubling information regarding how the socioeconomic status of parents in Mexico may influence whether or not doctors tell a family that their child is intersex. According to one study in Mexico, when doctors perceive a more “equal” relationship between themselves and patients and

<sup>1093</sup> IACHR, Annual Report 2014: *Chapter V. Follow up to the 2012 Jamaica Report*.

<sup>1094</sup> IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153<sup>rd</sup> Regular Session, October 28, 2014. Audio and video available at [www.iachr.org](http://www.iachr.org).

<sup>1095</sup> National Alliance to End Homelessness, *LGBTQ Youth*.

<sup>1096</sup> Spade, Dean. Interview by Laura Flanders, *The Laura Flanders Show*, GRITTV, 2015. Available at: See also Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex*, 2015.

<sup>1097</sup> *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/22/53*, February 1, 2013, para. 29.

<sup>1098</sup> Alcántara Z., Eva. “Pobreza y Condición Intersexual en México: Reflexiones y Preguntas en Torno al Dispositivo Médico”, Córdoba, Mejico: Anarres Editorial, 2009, p 16-30.

their families, the doctors strive to translate medical terminology into layperson's terms and fully explain the child's intersex or possible intersex status. However, in other hospitals or with respect to other patients where this perception of an equal relationship is not present, doctors tend not to communicate an intersex diagnosis to parents because the parents lack an "advanced school education."<sup>1099</sup> According to this study, there is a pervasive belief amongst medical staff that lower socioeconomic status or limited education of parents or relatives are unsurmountable barriers to understanding an intersex diagnosis. Further, in public hospitals where high demand for medical care must be met with scarce human resources, doctors cannot spend more than ten or twenty minutes with each patient. This hinders an effective and open dialogue with families about children who are born intersex, which in turn affects informed consent regarding genital surgeries and medical interventions. This study also shows, however, that families and fellow community members of intersex persons sometimes demonstrate a more open attitude toward the anatomical diversity of intersex children and adults than do medical specialists.<sup>1100</sup>

381. The Pan American Health Organization has addressed the problem of discrimination against, and exclusion of, LGBT persons in the health care sector.<sup>1101</sup> Research points to the fact that LGBT persons face barriers to accessing appropriate patient-centered health care and fail to make early and opportune use of health care services, or use them at all. Further, the World Health Organization has stated that there is widespread stigma "against homosexuality and ignorance about gender identity, both within mainstream society and within health systems."<sup>1102</sup>
382. Further, the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirmation surgeries and other related body modifications. The prevalence in Latin America of informal and risky body transformations procedures, which are deemed necessary for the construction of the gender identity and expression of some trans persons, causes a high number of (preventable) deaths of trans women.<sup>1103</sup> In one study conducted in Bogotá, Colombia, 96% of trans women interviewed had resorted to informal providers to transform their bodies. Specifically, 55% of these medical interventions were done in the house of a friend and 14% in garages or unlicensed private "clinics." Further, 62% of trans women interviewed reported that they had obtained informal body transformation procedures in the process of construction of their gender identity and expression, on more than one occasion, and as many as four times. Regarding breast augmentation procedures carried out by unlicensed

<sup>1099</sup> Alcántara Z., Eva. "Pobreza y Condición Intersexual en México: Reflexiones y Preguntas en Torno al Dispositivo Médico", Córdoba, Mejico: Anarres Editorial, 2009, p 16-30.

<sup>1100</sup> Alcántara Z., Eva. "Pobreza y Condición Intersexual en México: Reflexiones y Preguntas en Torno al Dispositivo Médico", Córdoba, Mejico: Anarres Editorial, 2009, p 16-30.

<sup>1101</sup> PAHO/WHO, 52<sup>nd</sup> Directing Council, Resolution CD52.R6, *Addressing the Causes of Disparities in Health Service Access and Utilization for Lesbian, Gay, Bisexual and Trans (LGBT) Persons*, Concept Paper.

<sup>1102</sup> WHO, *Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people*, Department of HIV/AIDS, June 2011.

<sup>1103</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Humans Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

providers, the survey responses indicated that the most common substances used to fabricate breast implants were cooking oil, Johnson’s baby oil, industrial oil used for aircraft, paraffin, animal fat, and, the most popular, liquid silicone.<sup>1104</sup> There are increasingly frequent reports of trans women dying as a result of these unlicensed, informal interventions. For example, the IACHR has received troubling information regarding a 20 year old trans woman in Valencia, Venezuela, who died in 2015 due to complications arising from silicone injections in her buttocks that were carried out in a hotel room,<sup>1105</sup> and a trans woman in Cartagena, Colombia, who died in 2014 following a procedure in a “spa” that involved the injection of seven liters of liquid silicone into her buttocks.<sup>1106</sup>

383. The IACHR urges Member States to adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and to continue to devote efforts and resources to eradicate poverty. OAS Member States must address discrimination based on sexual orientation, gender identity, sex characteristics and bodily diversity when designing and implementing actions and programs to tackle poverty. Further, States must act to protect all children and young adults from violence – including LGBT youth who are homeless – and ensure that effective child protection and support systems are in place, including shelters and other safety mechanisms for those in need of protection.<sup>1107</sup>

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<sup>1104</sup> Pachón, N. E. and Cruz, K. J. *“Uso De Modelantes Estéticos, Como Proceso de la Transformación Corporal De Mujeres Transgeneristas”*, Bogotá, 2013. Obtained from “Tábula Rasa: Revista de Humanidades.”

<sup>1105</sup> Venezuela Diversa, *“Muere mujer trans en Valencia luego de inyectarse silicona en glúteos,”* May 2015 (Available only in Spanish).

<sup>1106</sup> Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex para América Latina y el Caribe, *“Muere mujer trans en Cartagena, luego de practicarse una cirugía artesanal,”* 2014 (Available only in Spanish)

<sup>1107</sup> See, related, IACHR, Press Release No. 049/15, *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

CHAPTER 6  
STATES' RESPONSE TO  
VIOLENCE, AND ACCESS TO  
JUSTICE



## STATES' RESPONSE TO VIOLENCE, AND ACCESS TO JUSTICE

384. In the instant Report, the Inter-American Commission addresses states' obligations to prevent, investigate, punish, and provide reparations for acts of violence committed against persons based on their sexual orientation, gender identity, or bodily diversity. The Inter-American Human Rights System has yet to develop significant case law and jurisprudence interpreting States' obligations, through the petition and case system.<sup>1108</sup> Thus, the IACHR takes into account the international and regional developments in this regard, as well as its own decisions on violence in other contexts, as guidance to examine the States' obligations regarding cases involving violence based on prejudice against persons with non-normative sexual orientations and gender identities and diverse bodies.
385. States have a duty to apply due diligence in order to prevent, investigate, punish, and redress human rights violations, including killings and other acts of violence.<sup>1109</sup> According to the UN High Commissioner for Human Rights, this obligation includes: taking legislative and other measures to prohibit, investigate, and prosecute all acts of violence, and incitement to violence, motivated by prejudice and directed at LGBTI persons; providing remedies to victims and protection against reprisals; publically condemning such acts of violence; and recording statistics of such crimes and the outcomes of investigations, prosecutions, and remedial measures.<sup>1110</sup> The European Court of Human Rights has also affirmed that the obligation to prevent "hatred-motivated violence" by third parties, as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence, can fall under the obligation to put processes in place to prohibit torture (Article 3), and may also be seen to form part of the authorities' positive responsibilities under the prohibition of discrimination (Article 14).<sup>1111</sup>

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<sup>1108</sup> In November 2015, the IACHR deemed admissible a petition on alleged acts of torture that were committed against a gay man in Peru based on his sexual orientation. IACHR, Report No. 90/14, Petition 406-99. Admissibility. Luis Alberto Rojas Marín. Peru. November 6, 2014.

<sup>1109</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 11. On violence against women, see also, IACHR, Report 54/01, Case 12,051, Maria Maria da Penha Maia Fernandes, Brazil, April 16, 2001, paras. 43-44 and 55-57. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252 and ff.

<sup>1110</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 11.

<sup>1111</sup> ECHR, *Identoba and others, (Application no. 73235/12) v. Georgia*, 12 May 2015, para. 63.

386. In cases of violence against women, the Inter-American Human Rights System has established that the failure of a State to exercise due diligence to prevent and investigate violence against women is a violation of the State's international obligations,<sup>1112</sup> based on article 7(b) of the Convention of Belém do Pará, which establishes that States must by all appropriate means and without delay apply due diligence to prevent, investigate and impose penalties for violence against women.<sup>1113</sup> This is closely related to the State's obligation to prevent and respond to violence based on gender.
387. This chapter addresses the main human rights obligations of States with respect to violence against LGBTI persons. First, the Commission examines the obligation to prevent human rights violations against LGBTI persons and those perceived as such, and to investigate, prosecute, and guarantee victims' access to justice when such violence does occur. Next, the IACHR addresses the issue of reparations for LGBTI persons and their next-of-kin who are victims of violence based on prejudice.
388. In complying with its obligation of due diligence, States must take into account the different and intersecting forms of violence experienced by LGBTI persons, which are based on multiple forms of discrimination. As examined in the previous chapter, LGBTI persons are more likely to experience violence, and are more vulnerable to certain types of violence, when their non-normative sexual orientation and/or gender identity is combined with other factors such as ethnicity, sex, gender, migration status, age, work as human rights defenders, race, socioeconomic status and deprivation of liberty. States are urged to be aware of these multiple factors, and are called on to include these perspectives in all State measures aimed at preventing, investigating, prosecuting, and providing reparations regarding acts of violence against LGBTI persons.

## A. *States' obligation to Prevent Violence*

389. States have a fundamental duty to prevent the violation of human rights of persons subject to their jurisdiction, an obligation that derives from the duty to guarantee human rights under Article 1(1) of the American Convention on Human Rights,<sup>1114</sup> as well as the rights and freedoms set forth in the American Declaration.<sup>1115</sup> The

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<sup>1112</sup> IACHR, [Report 54/01](#), Merits, Case 12,051, *Maria Maria da Penha Maia Fernandes*, Brazil, April 16, 2001, paras. 43-44 and 55-57. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252 and ff.

<sup>1113</sup> OAS, General Assembly, [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#), adopted at Belem do Pará, Brazil, on September 6, 1994, article 7(b).

<sup>1114</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C, No. 4, para. 175.

<sup>1115</sup> The Inter-American Commission has stated that developments in the *corpus iuris* of international human rights law are relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, and which may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See *e.g.*, I/A Court H.R., [Interpretation of the American Declaration of the Rights and Duties of Man within the](#)

obligation to prevent human rights violations implies the adoption of all legal, political, administrative measures, and those regarding cultural changes, which ensure that a potential violation of human rights will be effectively addressed as a punishable offence.<sup>1116</sup> In cases of violence against women, the IACHR<sup>1117</sup> and the Inter-American Court of Human Rights<sup>1118</sup> have indicated that, in order to effectively prevent such violence, States' strategies should be comprehensive, should be aimed at addressing known risk factors for the violence, and should strengthen institutions that can provide an effective response.

390. States are not immediately responsible for every human rights violation committed by private individuals under their jurisdiction. The obligation to adopt measures to prevent human rights violations committed by private individuals, where it exists, arises when a state knows or should know of current or imminent risk to an individual or group in a situation in which the State has a reasonable opportunity to prevent or avoid that risk.<sup>1119</sup> The obligation of due diligence requires that States ensure the protection of persons who are at particular risk of violence, including those targeted because of their sexual orientation or gender identity.<sup>1120</sup> As discussed in this Report, LGBTI persons are particularly vulnerable to violence because they do not conform to socially-constructed gender expectations and norms, because they are outside the male/female binary, or because their bodies do not fit the standard definition for male and female bodies.
391. The IACHR notes that, in order to fully comply with the duty to prevent violence against LGBTI persons, States must develop cross-cutting strategies which include, but are not limited to: establishing data collection mechanisms to study and assess the extent and tendencies of these types of violence; enacting legal provisions criminalizing violence based on prejudice against non-normative sexual orientations and gender identities, as well as against bodily diversity; pursuing community-based prevention; and designing and implementing comprehensive public education policies and programs to eradicate stereotyping and stigmatization of LGBTI persons. All of these measures should involve State institutions at both the national, state and local level and in various sectors, ranging from the police and justice system to the education, health, and labor sectors.

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*Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 37; I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 115; IACHR, Report No. 12/14, Case 12.231, Merits (Publication). Peter Cash. Commonwealth of The Bahamas, April 2, 2014, paras. 58 and 60.

<sup>1116</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 41.

<sup>1117</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 49.

<sup>1118</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>1119</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280. See also, I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 123.

<sup>1120</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 20.

## 1. Data Collection

392. On multiple occasions, the IACHR has urged OAS Member States to implement data collection policies in order to better document particular categories of violence, especially violence and discrimination against women and Afro-descendants.<sup>1121</sup> Since 2013, the OAS General Assembly has encouraged States to produce data on violence that is based on sexual orientation and gender identity, with a view to fostering public policies that protect the human rights of LGBTI persons.<sup>1122</sup> The IACHR has highlighted the crucial importance of adequate data collection mechanisms to the design of effective public policies aimed at combatting these forms of violence and discrimination,<sup>1123</sup> and has urged OAS Member States to ensure that such data “is disaggregated by factors such as race and ethnicity.”<sup>1124</sup>
393. The UN High Commissioner for Human Rights has expressed concern about deficient or non-existent mechanisms for collecting data regarding violence against LGBTI persons, and has recommended that States put in place such mechanisms.<sup>1125</sup> At the Council of Europe, the Committee of Ministers recommended to European States that they gather and analyze relevant data on the prevalence and nature of discrimination and intolerance on the grounds of sexual orientation or gender identity.<sup>1126</sup>
394. In the context of the State’s obligation to prevent and respond to human rights violations, data collection procedures are required in order to uniformly and accurately measure the prevalence, trends, and other aspects of violence in a given State or region. Detailed analysis of this data provides authorities with the information and insights that are needed in designing public policies to prevent further acts of violence. Additionally, dissemination of data begins to make visible

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<sup>1121</sup> IACHR, Report: *The Situation of People of African descent in the Americas*, 2011, paras. 14, 22 and 75; IACHR, Report: *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 32 (hereinafter IACHR, Report: *Access to Justice for Women Victims of Sexual Violence: Education and Health*, 2011); IACHR, *Annual Report 2009, Chapter V: Follow-Up Report Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II.135 Doc. 40, August 7, 2009, para. 216; IACHR, Report: *The situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination*, Chapter IV: *the Right of Women to be Free from Violence and the Obligation of the Mexican State to Respect and Ensure that Right*, OEA/Ser.L/V/II.117 Doc. 44, March 7, 2003.

<sup>1122</sup> AG/RES. 2863 (XLIV-O/14) *Human Rights, Sexual Orientation and Gender Identity and Expression*, approved at the fourth plenary session, held on June 5, 2014; AG/RES. 2807 (XLIII-O/13), *Human Rights, Sexual Orientation and Gender Identity and Expression*, adopted at the fourth plenary session, held on June 6, 2013.

<sup>1123</sup> IACHR, Press Release No. 79/13, “IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGBTI Persons,” October 24, 2013.

<sup>1124</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

<sup>1125</sup> OHCHR, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, paras. 23, 84(a). OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, paras. 27; 78 (c).

<sup>1126</sup> Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity: Appendix*, March 31, 2010, para. 5.

the prevalence of violence against LGBTI persons. The data may also reveal patterns of violence and determine whether specific communities face higher risks of victimization. This information in turn is useful in assessing the need for stronger preventative action, enhancing and targeting public outreach by law-enforcement agencies, and improving training efforts and services for victims and witnesses.

395. Various OAS Member States<sup>1127</sup> and numerous civil society organizations<sup>1128</sup> from across the Americas report that either no information is collected or, where information is collected, it is not properly disaggregated according to the victim's sexual orientation or gender identity. On the other hand, the IACHR has also been informed that various OAS Member States have put in place data collection mechanisms in order to address such deficiencies.
396. For example, the Hate Crime Statistics Act in the United States<sup>1129</sup> — as amended in 2009 by the “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act” (hereinafter “Matthew Shepard and James Byrd, Jr. Act”)<sup>1130</sup> — requires that the Attorney General collect data on crimes committed due to the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In this regard, the Commission recognizes that the United States has established a comprehensive data collection mechanism, administered by the U.S. Department of Justice, in which two different but complementary

<sup>1127</sup> [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 13; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013, received by IACHR Executive Secretariat on December 2, 2013, p. 5; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 dated December 20, 2013, received by IACHR Executive Secretariat on December 20, 2013, p. 1; [Paraguay], Public Hearing *Reports of Violence against Trans Persons and Impunity in Paraguay*, March 17, 2015, 154<sup>th</sup> Period of Sessions.

<sup>1128</sup> [Belize] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “United Belize Advocacy Movement (UNIBAM),” received by IACHR Executive Secretariat on November 7, 2013; [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Movimiento de Integración y Liberación Homosexual (MOVILH),” dated November 20, 2013, p. 6; [Colombia] Colombia Diversa, “*Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gays, Bisexuales y Personas Trans en Colombia 2012*,” June 2014, p. 22; [Costa Rica] CEJIL, “*Estudio sobre los crímenes de odio motivados en la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua*,” 2013, p. 95; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Asociación de Mujeres Alas de Mariposas,” received by IACHR Executive Secretariat on December 20, 2013, p. 2; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS),” received by IACHR Executive Secretariat on December 20, 2013, p. 4; [Peru] PROMSEX, “*Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2013-2014*,” May 2014, p. 34.

<sup>1129</sup> FBI, *Hate Crime Statistics Act* 28 U.S.C. § 534 (HCSA)

<sup>1130</sup> This act is named after Matthew Wayne Shepard and James Byrd Jr., both of whom were victims of hate crimes. Matthew Shepard was a 22-year-old gay student who was beaten, tortured, and murdered in the State of Wyoming in 1998. James Byrd was an American afro-descendant man who was brutally killed by white supremacists in the State of Texas, also in 1998. His killers tied him to a truck, dragged him for three miles along an asphalt road, and decapitated him. Full text of the law is available at: [Public Law 111-84 - Oct. 28, 2009](#), p. 647.

statistical programs measure the prevalence and impact of crime:<sup>1131</sup> the National Crime Victimization Survey (NCVS) of the Bureau of Justice Statistics;<sup>1132</sup> and the Uniform Crime Reporting Program (UCR) of the Federal Bureau of Investigation (FBI).<sup>1133</sup> There are other departments, including the Department of Education and the Department of Health, that have further mechanisms in place to collect data from specific environments. From 2010 to 2012 the Department of Justice collected information, via the NCVS, on 126,040 violent crimes against persons aged 12 or older that were motivated by the sexual orientation of the victim. These crimes included rape and other sexual assault, robbery, simple assault, and aggravated assault.<sup>1134</sup> According to the information provided to the IACHR, the FBI's UCR Program has modified the way in which data is collected, following the passage of the Matthew Shepard and James Byrd, Jr. Act of 2009, by using new and revised definitions and by issuing new Hate Crime Data Collection Guidelines and a Training Manual for police forces and other agencies that collect data on these crimes.<sup>1135</sup>

397. Since 2011, the State of Brazil has developed the “Report on Homophobic Violence in Brazil,” an annual report that compiles information on acts of violence against lesbians, gays, bisexuals, and trans persons.<sup>1136</sup> The United Nations Development Program (UNDP) has also contributed to that report.<sup>1137</sup> This report is divided into two parts: the first features data collected by the Federal Government, through the “Dial 100” and “Dial 180” hotlines and through the Complaint Mechanism of the Health System (“*Ouvidoria do Sistema Único de Saúde*”). The second part presents information collected from newspapers and other media sources.<sup>1138</sup> The Federal Government has sought to improve its system for collecting information related to homicides. To this end, in 2014 the Ministry of Health began to request

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<sup>1131</sup> For detailed information about these two mechanisms, visit: US Dept. of Justice, *The Nation's Two Crime Measures*, September 2014 | NCJ 246832.

<sup>1132</sup> The National Crime Victimization Survey (NCVS) is a survey that collects data from a nationally representative sample of persons in US households who are aged 12 or older. The NCVS includes questions about crime based on sexual orientation, whether or not it has been reported to the police. However — as explained by the United States in its response to the IACHR — the NCVS does not collect information about violent crimes that are committed by state agents. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.

<sup>1133</sup> Through the Uniform Crime Reporting Program (UCR), the FBI collects data from police reports regarding criminal offences that were motivated, in whole or in part, by the offenders' biases against the victims' race, religion, sexual orientation, ethnicity/national origin, or disability. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.

<sup>1134</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.

<sup>1135</sup> U. S. Department of Justice, Federal Bureau of Investigation, *Hate Crime Data Collection Guidelines and Training Manual*, December 19, 012.

<sup>1136</sup> The methodology was designed by a working group composed of members of the National Council against LGBTI Discrimination (“*Conselho Nacional de Combate à Discriminação contra Pessoas LGBT*”), scholars from various universities, experts from the Brazilian Health Ministry, and experts from the Secretariat for Women Policies.

<sup>1137</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.

<sup>1138</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.

information about sexual orientation and gender identity as part of the mandatory notifications of violent deaths that it receives.<sup>1139</sup>

398. In response to the IACHR questionnaire on violence against LGBTI persons in the Americas, the State of Guatemala indicated that the Ombudsman for Human Rights (“Procurador de los Derechos Humanos”) had been able to generate statistics on violence against LGBT persons.<sup>1140</sup> However, it also informed the IACHR that in the database used by the prosecution service (“Ministerio Público”) there were no data fields in which information on sexual orientation or gender identity could be entered.<sup>1141</sup> Moreover, a Guatemalan organization reported in 2010 that officials had expressly stated that they did not record the victim’s sexual orientation, except in “well-known cases.”<sup>1142</sup> Nevertheless, Guatemalan civil society organizations informed the Commission that, as of December 2014, the form used to report crimes to the police included a field marked “LGBTI population,” next to the field in which “male” or “female” can be selected.<sup>1143</sup>
399. The IACHR has made a recommendation to the State of Colombia that it design and put in place information and registration systems, to gather official data at a national level which allow to give visibility and to effectively address human rights violations committed against LGBTI persons.<sup>1144</sup> In December 2014, the State informed the IACHR that its plan was to include the design and implementation of such systems within a broader overhaul of public policy.<sup>1145</sup> A local NGO indicates, however, that although both the Office of the Inspector General (Procuraduría General de la Nación) and the Ombudsman’s Office have the possibility of recording data on sexual orientation and gender identity in case files and forms, officials in those agencies have not been properly trained on the subject, and thus there is significant underreporting.<sup>1146</sup> That said, the IACHR recognizes the State’s efforts since 2012 to collect and provide disaggregated data on the sexual orientation and gender identity of victims via two of the main data collection tools used by the “Victim’s Unit” (SNARIV).<sup>1147</sup>

<sup>1139</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.

<sup>1140</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013 dated December 2, 2013, received by IACHR Executive Secretariat on 2 December 2013, p. 5.

<sup>1141</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note SAIC 1388-2013, received by the IACHR Executive Secretariat on December 2, 2013, p. 5.

<sup>1142</sup> Organización de Apoyo a una Sexualidad Integral Frente al SIDA (OASIS), “*Crímenes de Odio en Guatemala: una Aproximación a los Retos y Desafíos para el Desarrollo de una Investigación sobre Crímenes en el País en contra de Gay, Bisexuales y Trans*,” April 2010, p. 38 (Available only in Spanish).

<sup>1143</sup> Sin Etiquetas, “*Guatemala: Formulario Policial de Denuncias incluye a población LGBTI*,” December 29, 2014.

<sup>1144</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013.

<sup>1145</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 355.

<sup>1146</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>1147</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 350. Cited in IACHR, Annual Report

400. The Commission stresses that, in order to be able to generate data on violence based on prejudice, States must take steps to create IT systems and reporting mechanisms that expressly incorporate variables of sexual orientation and gender identity. If systems in place do not allow for this information to be included when crime data is recorded, States should make the necessary adaptations to include them. In this regard, the IACHR welcomes the information submitted by the Venezuelan Office of the Ombudsman, which indicated that, in 2007, forms used to file complaints were revised to incorporate the fields of “sexual orientation” and “gender identity” of the victim, and in 2009 the corresponding database was updated to display this information.<sup>1148</sup>
401. The Inter-American Commission also received reports of challenges in collecting data relating to acts of violence against LGBT persons in Chile and Peru. In Chile, for example, besides from having legislation against discrimination which will be addressed below, there is no legislation establishing hate crimes regarding sexual orientation, gender identity and expression. Consequently, as the State informed the IACHR at the end of 2013, statistics in this regard are not collected.<sup>1149</sup> Local organizations have reported that the Office of the Ombudsman in Peru has explained that its database does not contain any reference to the sexual orientation or gender identity of victims “because that information is private to the victim.”<sup>1150</sup> Regarding this concern, the Commission is of the view that this question of privacy should not be allowed to interfere with States’ duty to collect this information for statistical, policy development, and crime fighting purposes. That said, the IACHR acknowledges that there are inherent risks in identifying oneself as lesbian, gay, bisexual, or trans, particularly to the police. Therefore in collecting this information, States need to put in place systems that respect the privacy of LGBT persons as much as possible, and need to give assurances that privacy will be respected, so that the collection of such data does not result in further victimization or stigmatization.
402. The IACHR urges OAS Member States to create national mechanisms, which may take the form of working groups, coordinating offices, or specific protocols among offices of statistics, so that the situation of violence against LGBT persons can be measured at the national level. It is crucial that data is gathered in a standardized manner, so that information from different regions can be compared and aggregated in order to reveal trends at the national level. In this regard, the State of Mexico indicated that, although some information had been collected at the federal level, data collection at the state level was not systematic.<sup>1151</sup> The IACHR

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2014, *Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 286.

<sup>1148</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20, 2013, received by IACHR Executive Secretariat on December 26, 2013, p. 3.

<sup>1149</sup> Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 3.

<sup>1150</sup> PROMSEX, “Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2013-2014”, May 2014, p. 34.

<sup>1151</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 8.

acknowledges that federated States may face additional challenges when setting up a national coordinated mechanism of data collection. In these cases, the Commission urges federal States to strengthen efforts to generate tools or enter into agreements with local governments to collect data in a cooperative and coordinated manner.

403. In many other OAS Member States, numerous civil society organizations collect data on human rights violations, which would otherwise go undocumented. Data collected by civil society organizations and other non-state actors, while useful, are often times not comprehensive, because of limited access to information. The State not only has the duty to collect this data, but is in a better position to do so, through its different government agencies.
404. Most of the aforementioned mechanisms for collecting data are contingent on reporting by victims. Consequently, the IACHR highlights that States must make special efforts to collect data from sources which do not depend on formal reports being brought to the attention of authorities. To this end, national statistics agencies or other relevant agencies such as National Human Rights Institutions should carry out surveys to collect data on acts of violence suffered by lesbian, gay, bisexual, trans, or intersex persons, or those perceived as such. These complementary mechanisms are especially useful to collect information on certain types of violence not typically reported to the authorities, such as domestic violence and police abuse. States should also consider entering into agreements with civil society organizations that collect data through their own means.
405. Data collection efforts need to be matched with training of state officials in adequately documenting and recording the violence. According to the UN High Commissioner on Human Rights, “prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting.”<sup>1152</sup> State agents must receive adequate training in order to be able to enter accurate information in recording mechanisms, to pay due attention to specific variables regarding LGBT people when receiving reports, and to have a proficient command of the mechanisms in place. Insufficient training of police agents, prosecutors, and forensics authorities is another factor that can lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.”<sup>1153</sup> Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender identity and thereby identify trans women as “gay men.”<sup>1154</sup> In some States, organizations have reported that authorities register gay, trans, lesbian, or bisexual persons under umbrella terms

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<sup>1152</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 25 [original footnotes omitted].

<sup>1153</sup> See, e.g., [Guatemala] IACHR, *Hearing on Discrimination based on Sexual Orientation and Gender Identity in Guatemala*, 146 Period of Sessions, November 4, 2012; and [Colombia] Colombia Diversa, “*Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*”, 2013, p. 10.

<sup>1154</sup> IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, February 24-25, 2012.

like “LGBT” or “gay” — even if they are trans persons — without specifying their orientation or identity.<sup>1155</sup>

406. Further, the IACHR stresses that data must be disaggregated as much as possible, so as to reflect the particularities and tendencies of this violence. Disaggregation of data becomes a key factor when violence against LGBTI persons is the result of the intersection of discrimination based on sexual orientation, gender identity and bodily diversity with discrimination based on other grounds, such as race, ethnicity, disability, age, nationality, and socio-economic status of victims, among many other aspects. In 2013, the IACHR welcomed Brazil’s efforts to produce disaggregated data regarding crimes motivated by the victim’s actual or perceived sexual orientation or gender identity.<sup>1156</sup> On that occasion the Commission also urged the State to include “race” as a criterion for data collection, in addition to sexual orientation and gender identity. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, has welcomed efforts by States to set up data-collection systems on hate crimes, including hate crimes committed against individuals on the grounds of race, color, ethnicity, origin, citizenship, language, religion, disability, sexual orientation, gender, or gender identity.<sup>1157</sup>
407. The IACHR notes with concern that there is almost no data collected with respect to intersex persons. According to the Council of Europe “[t]o date there is little information about the legal and social situation of intersex people in many European countries and around the world.”<sup>1158</sup> For these reasons, on March 15, 2013, the IACHR convened of its own accord a hearing to learn from intersex persons and human rights defenders about the main human rights violations faced by intersex persons.<sup>1159</sup> For example, as explained in this report, medical and other types of violence against intersex persons remains highly invisible. During the fifteen-month review period discussed at various points above in this Report, the IACHR did not receive any reports of cases of violence against intersex persons. This not because such violence did not occur, but because violence against intersex persons is often carried out under State-approved medical protocols, and is seldom reported in the media or denounced by victims, their families, or civil society organizations.<sup>1160</sup> One intersex activist from Costa Rica explained to the IACHR that the situation of intersex persons is not talked about in public or private

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<sup>1155</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colectivo Entre Tránsitos et. al.” (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 16; Colombia Diversa, “*Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*”, June 2014, p. 7.

<sup>1156</sup> IACHR, Press Release No. 83/A, *Annex to the Press Release issued at the Close of the 149th Session*, November 8, 2013.

<sup>1157</sup> UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, A/HRC/18/44, July 21, 2011, para. 13.

<sup>1158</sup> Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, p. 16.

<sup>1159</sup> IACHR, *Public Hearing on the Human Rights Situation of Intersex Persons in the Americas*, March 15, 2013. Audio and video available at [www.iachr.org](http://www.iachr.org).

<sup>1160</sup> IACHR, Press Release No. 153A/14, *Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, Annex to Press Release No. 153/14. December 17, 2014.

hospitals or medical associations, and also that the families of intersex persons do not talk about these issues because discussions related to the genitals or to sexuality are considered taboo.<sup>1161</sup> The IACHR urges OAS Member States to conduct data collection efforts to assess the prevalence of non-medically necessary interventions on intersex children. This is the first step in identifying a practice that is widely accepted among the medical communities of some Member States, but which is in clear violation of international human rights law, as explained in the previous chapter.

408. In sum, the IACHR urges all States to make serious efforts to systematically collect data on violence against LGBTI persons. These efforts must be carried out in coordination with all branches of government. Additionally, in States where Offices of the Ombudsperson, Public Prosecution, or Public Defense are autonomous or independent, special cooperation mechanisms should be put in place to ensure that their data is also considered as input for statistics at a national level. States also need to collect data on access to justice. Data comparing how violence is addressed at different stages in the proceedings, from reporting through trials and sentencing (and whether hate crime legislation was applied), will allow States to better identify the challenges to access to justice, and the reasons why the rate of impunity is so alarmingly high, as examined later in this chapter. OAS Member States should make serious efforts to establish data collection systems capable of gathering information from a wide variety of sources, including but not limited to: information contained in records kept by police forces, forensic agencies, tribunals and courts, prosecution and public defense offices, all other relevant agencies of the justice system, offices of ombudspersons, agencies providing assistance to victims, public hospitals, public schools, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans, and intersex persons.

## 2. Legislative Measures to Prevent Violence

409. As examined in chapter four, violence and discrimination against LGBTI persons, committed by both state and non-state actors, are ubiquitous across the Americas. Societal discrimination combined with impunity, lack of effective investigations, and the absence of a differentiated approach to the investigation and prosecution of crimes committed against LGBTI persons, have the effect of condoning the violence, and results in failure to curtail it. The absence of legal recognition of sexual orientation, gender identity, and bodily diversity as grounds on the basis of which violence is committed renders this violence invisible in the eyes of the law, erasing the enhanced risk of violence faced by LGBTI persons. Even beyond this, there are countries in which violence is fueled by legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

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<sup>1161</sup> Testimony and information by Natasha Jimenez, MULABI, presented to the IACHR, *Public Hearing on the Rights of Intersex Persons*, March 15, 2013. Audio and video available at [www.iachr.org](http://www.iachr.org).

### a. Enhanced legal protection from violence based on prejudice

410. The IACHR notes that there is a growing consensus about the legal recognition of crimes motivated by the perception of the victim's sexual orientation or gender identity as an aggravating factor in the sentencing of crimes, when there is evidence that these factors played a role in the crimes. This consensus includes international and regional human rights experts, international and regional human rights bodies, and an increasing number of OAS Member States. The UN Human Rights Committee has urged States to specifically criminalize acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity).<sup>1162</sup> The Committee of Ministers of the Council of Europe has recommended that States "ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance."<sup>1163</sup> Civil society organizations have vocally advocated for the enactment of such legal provisions.<sup>1164</sup> For the Office of the High Commissioner for Human Rights, these "laws can play an important role in facilitating the prosecution and punishment of perpetrators of hate-motivated violence and in establishing homophobia and transphobia as aggravating factors for the purposes of sentencing."<sup>1165</sup> As such, in its 2015 Report, the High Commissioner recommended that States address violence by "[e]nacting hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing."<sup>1166</sup>
411. Analogously, in 2011, the IACHR highlighted the positive step taken by States to eradicate violence against women by the enactment of laws that send a social message that violence against women will not be tolerated and will be punished.<sup>1167</sup> The UN General Assembly stressed the need to treat all forms of violence against women and girls as a criminal offence, punishable by law.<sup>1168</sup>

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<sup>1162</sup> Human Rights Committee, *Concluding observations: Poland*, CCPR/C/POL/CO/6, 15 November 2010, para. 8.

<sup>1163</sup> Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity: Appendix*, 31 March 2010, para. 2.

<sup>1164</sup> Human Rights First, *Ten-Point Plan for Combating Hate Crimes*, (n.d). Civil society organizations have recommended to OAS Member States in numerous public hearings held before the IACHR that they adopt hate crimes laws. For example, during the hearing on the human rights situation of LGBT persons in the Dominican Republic held on October 23, 2015, civil society organizations present indicated that despite years of requests by NGOs, the latest reform of the criminal code passed in February 2015, did not include hate crimes based on sexual orientation or gender identity. Hearing requested by Diversidad Dominicana, Funceji, RevASA, Amigos siempre Amigos, GAYP and Cariflags. Public Hearing "Human Rights Situation of LGBT Persons in the Dominican Republic," 156<sup>th</sup> Period of Sessions, October 23, 2015. Audio and video available at [www.iachr.org](http://www.iachr.org).

<sup>1165</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 39.

<sup>1166</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 78(a).

<sup>1167</sup> IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 134.

<sup>1168</sup> UN GA, *Resolution 61/143: Intensification of efforts to eliminate all forms of violence against women*, A/RES/61/143, January 30, 2007, pt. 4.

Along these same lines, in 2011, the IACHR recommended that OAS Member States adopt legislation that punishes acts of racial discrimination.<sup>1169</sup>

412. The IACHR acknowledges legal measures adopted by various OAS Member States, including: establishing aggravating circumstances in sentencing for crimes committed on the basis of sexual orientation and/or gender identity; incorporating hate or bias-motivated crimes into their legal systems; adopting new anti-discrimination laws that explicitly include sexual orientation and gender identity; and extending the protection of existing non-discrimination legislation to include sexual orientation and gender identity. For example, countries including Argentina,<sup>1170</sup> Bolivia,<sup>1171</sup> Chile,<sup>1172</sup> Canada,<sup>1173</sup> Colombia,<sup>1174</sup> Ecuador,<sup>1175</sup> United States,<sup>1176</sup> El Salvador,<sup>1177</sup> Honduras,<sup>1178</sup> Mexico,<sup>1179</sup> Nicaragua,<sup>1180</sup> Suriname,<sup>1181</sup> and Uruguay,<sup>1182</sup> have either enacted hate crime legislation or included sexual orientation and/or gender identity as aggravating factors in sentencing. Brazil does not have federal legislation in this regard, but several Brazilian states criminalize acts of violence based on sexual orientation, gender identity, and/or gender expression.<sup>1183</sup>

<sup>1169</sup> IACHR, *The Situation of People of African Descent in The Americas*, 2011, para. 260 (6).

<sup>1170</sup> Argentina has incorporated motive based on the sexual orientation, gender identity, or gender expression of the victim as an aggravating circumstance, which, according to the information received, applies only to the crime of homicide. Argentine Criminal Code, §80(4), as amended by Law 26.791, §1. Published in Official Gazette December 14, 2012.

<sup>1171</sup> Bolivian Criminal Code, Art. 40bis; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13 dated May 19 2013, received by IACHR Executive Secretariat on December 23, 2013, p. 7.

<sup>1172</sup> Chilean Criminal Code, Article 12(21); Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 2.

<sup>1173</sup> Canadian Criminal Code (R.S.C., 1985, c. C-46), article 718.2(a)(i).

<sup>1174</sup> See Article 58 of the Colombian Criminal Code (Ley 599 of 2000), published on July 24, 2000.

<sup>1175</sup> The Ecuadorean Criminal Code contemplates hate crimes based on, among other grounds, sexual orientation or gender identity, including incitement or perpetration of any kind of physical or moral violence. Código Orgánico Integral Penal (COIP), Art. 177 (2014); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013, received by IACHR Executive Secretariat on December 2, 2013, p. 7.

<sup>1176</sup> United States Code, Title 18, Chapter 13, §249 - "Hate Crimes Acts;" Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), p. 24.

<sup>1177</sup> The Washington Blade, *El Salvador lawmakers approve enhanced hate crime penalties*, September 9, 2015.

<sup>1178</sup> The IACHR was informed that the President of El Salvador signed these reforms into law on October 5, 2015.

<sup>1178</sup> Honduran Criminal Code, Article 27; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 4.

<sup>1179</sup> Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.

<sup>1180</sup> Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4.

<sup>1181</sup> According to information received by the IACHR in August 2015, Suriname modified Article 175 of the Criminal Code to include an increase in penalties for crimes committed on the basis of sexual orientation.

<sup>1182</sup> Uruguayan Criminal Code, Article 149bis (as amended by Law 17.677 of 2003).

<sup>1183</sup> These states include Mato Grosso, Sergipe, Pará, São Paulo, and Rio de Janeiro. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Casarão do Brasil, Brazil, received on November 25, 2013. The Commission was informed by civil society organizations that the main obstacle to approving federal legislation criminalizing violence against LGBT persons is the presence and

413. The IACHR takes note that some countries have included *sexual orientation* — sometimes referred to as *sexual preference* —<sup>1184</sup> but have failed to include *gender identity* in these legal protections.<sup>1185</sup> The Inter-American Commission stresses that States should expressly include *gender identity* as a ground for protection in legislation and public policy. The Commission is cognizant of the arguments by some States that protection for trans persons can be subsumed in the terms *sex* or *gender* in the wording of laws or legal provisions. Although progressive interpretation by analogy and the use of open-ended clauses may be a useful tool for the construction of laws and regulations, the IACHR recommends the specific inclusion of the term *gender identity*, for the purposes of legal certainty and visibility. The IACHR is not aware of any legislation in OAS Member States that has specifically outlawed violence against intersex persons, or which includes bodily diversity or the fact of being intersex as a prohibited category regarding discrimination, or aggravating factors in the sentencing of a crime.
414. Even in countries that have passed hate crime laws and enhanced penalties for crimes based on prejudice, the poor implementation of such legal measures has been criticized by members of academia and civil society organizations, for a variety of reasons. Once these laws are passed, States sometimes fail to adopt further, complementary measures to address violence based on prejudice. Further, implementation of these laws is often weak, because of inefficiencies and obstacles in accessing justice for these crimes, including the prevalence of biased investigations, and the lack of training of police, forensics specialists, prosecutors, and judges. Despite these shortcomings in implementation, there seems to be consensus that the enactment of these provisions has a symbolic impact in recognizing these types of violence and in sending a strong message to society as a whole that the State takes these crimes seriously.<sup>1186</sup>
415. For instance, the Commission has noted that, notwithstanding that Article 58 of the Colombian Criminal Code recognizes the sexual orientation of the victim as an

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influence of radical religious groups and politicians in Congress. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.

<sup>1184</sup> The IACHR is of the view that the correct terminology is *sexual orientation* and not *sexual preference*. See I/A Court H.R., *Case of Atala Riffó and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

<sup>1185</sup> [Canada] Canadian Criminal Code (R.S.C., 1985, c. C-46), article 718.2(a)(i); [Colombia] Colombian Criminal Code, Article 58(3) (Ley 599 of 2000), published on July 24, 2000; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colombia Diversa,” received by IACHR Executive Secretariat on November 26, 2013, p. 72; [Nicaragua] Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4; [Mexico] Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.

<sup>1186</sup> In this regard, see *e.g.*, the recognition and criticism made from the academy to legislation against hate crimes in the United States, in Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, pp. 108 and ff. [Free translation by the IACHR].

aggravating factor, a civil society organization reported that this criminal provision is not being enforced due to prevailing prejudices in the administration of justice system.<sup>1187</sup> The IACHR recommended that the State of Colombia adopt measures to ensure that prosecutors and judges properly implement the existing legal provisions in cases of violence against LGBT persons. In December 2014, the IACHR was informed by one organization that out of the 730 murders of LGBT persons documented between 2006 and 2014, "so far, not a single conviction has recognized sexual orientation or gender identity as a motive or aggravating circumstance."<sup>1188</sup> The IACHR reiterated its concern over lack of implementation of this provision, in its 2014 Annual Report.<sup>1189</sup>

416. Regarding intersex persons, the Commission has recommended that States take steps to prohibit medical or surgical treatment or interventions of intersex people when these are medically unnecessary and are conducted without the prior, free and informed consent of intersex persons themselves.<sup>1190</sup> These interventions can result in severe, long-term physical and psychological suffering, affecting intersex children's rights to physical integrity, health, privacy, and autonomy, and in some cases may constitute torture or ill treatment.<sup>1191</sup> The UN High Commissioner for Human Rights, the Committee on the Rights of the Child, the UN Committee against Torture, the special procedures mandate holders on the right to health, and the special procedures mandate holders on torture, have all called for an end to this practice.<sup>1192</sup> In this regard, the Commissioner for Human Rights of the Council of Europe recommended in a 2015 report that "[s]ex characteristics should be included as a specific ground in equal treatment and hate crime legislation or, at least, the ground of sex/gender, should be authoritatively interpreted to include sex characteristics as prohibited grounds of discrimination."<sup>1193</sup>

<sup>1187</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013.

<sup>1188</sup> Colombia Diversa, "Información sobre situación de derechos humanos de personas LGBTI en Colombia," received on December 11, 2014.

<sup>1189</sup> IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, para. 292.

<sup>1190</sup> Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, and the Commissioner for Human Rights of the Council of Europe. *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>1191</sup> Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, and the Commissioner for Human Rights of the Council of Europe. *Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights*, May 17, 2015.

<sup>1192</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 53. See also, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/HRC/22/53, February 1, 2013, para. 88.

<sup>1193</sup> Council of Europe, Commissioner for Human Rights. *Issue paper: Human Rights and Intersex People*. Silvan Agius. May 12, 2015, p. 9, recommendation 5. The IACHR takes note of legislation in this regard recently passed in countries outside the Americas region, namely Australia and Malta. Malta's Gender Identity, Gender Expression and Sex Characteristics Act was approved by the Maltese Parliament in April 2015. European Parliament's Intergroup on LGBT Rights, *Malta adopts ground-breaking gender identity, gender expression and sex characteristics law*, April 2, 2015.

417. The IACHR takes into account the symbolic impact, positive social message, and improved prevention that arise from legislation that specifically protects LGBTI persons from violence. The IACHR calls on OAS Member States to extend legal protection from violence so that such protection explicitly recognizes and punishes crimes based on the victim's sexual orientation, gender identity, bodily diversity or sex characteristics.

### **b. Enactment of legislation protecting and recognizing the rights of LGBTI persons**

418. The UN Human Rights Committee has urged the adoption of “comprehensive legislation to combat discrimination, including provisions that provide protection against discrimination on grounds of sexual orientation and gender identity.”<sup>1194</sup> States must recognize in their legislative framework the human rights of all persons, without discrimination on the basis of sexual orientation, gender identity, or bodily diversity. The IACHR is of the opinion that in order to prevent and address violence against LGBTI persons, States must adopt a legal framework to specifically protect persons from discrimination based on sexual orientation, gender identity, or bodily diversity (due to being intersex), given the inherent link between violence and discrimination that was examined in the second chapter of this report.

419. In the context of this report, the IACHR notes that this obligation includes the adoption of gender identity laws. In recent years, the IACHR has consistently called on OAS Member States to adopt gender identity laws, which recognize the right to identity of trans persons in a way that does not pathologize trans persons. The best practice in the region is the Gender Identity Law in Argentina, which does not require any type of medical intervention or procedure, judicial proceeding, or psychiatric or medical certification, in order for persons to have their gender recognized. One study indicates that the prevalence of violence and discrimination against trans persons in Argentina has diminished since the passing of the gender identity law in 2012.<sup>1195</sup> However, the IACHR continues to receive information on killings and other acts of violence against trans women in different provinces in Argentina.<sup>1196</sup> The IACHR takes note that Uruguay has also passed a gender

<sup>1194</sup> Human Rights Committee, *Concluding observations: Paraguay*, CCPR/C/PRY/CO/3, March 26, 2013, para. 9.

<sup>1195</sup> ATTTA and Fundación Huesped, “*Ley de Identidad de Género y Acceso al Cuidado de la Salud de las Personas Trans en Argentina*,” May, 2014, pp. 12-13 (Available only in Spanish).

<sup>1196</sup> See, e.g., Cáscara Amarga, “*La Federación Argentina LGBT pide justicia para una mujer transexual asesinada*,” January 12, 2015 (making reference to the killing of Pamela Moreno, trans woman in Santiago del Estero) (Available only in Spanish); Clarín, “*Con odio y saña, castra y asesinan a una chica trans en Córdoba*,” July 27, 2015 (making refernece to the killing of Laura Moyano in Córdoba) (Available only in Spanish); BBC, *Argentina transgender killing spark outcry*, October 15, 2015 (making reference to the killing of Diana Sacayán in Buenos Aires, whose body was found on October 13, 2015); Office of the High Commissioner for Human Rights, Regional Office for South America, “*Oficina Regional repudia muertes de personas transgénero en Argentina*,” October 21, 2015 (making reference to the killing of Marcela Chocobar in Santa Cruz on September 26, 2015, and that of Fernanda “Coty” Olmos in Santa Fe, whose body was found on September 14, 2015) (Available only in Spanish).

identity law, which became the first country to do so in 2009<sup>1197</sup> and that there is a gender identity bill pending in Congress in Chile.<sup>1198</sup>

420. Furthermore, in July 2015, the IACHR congratulated Mexico and Colombia for the adoption of decrees that allow for the sex component or gender marker on identity documents to be changed through simple administrative procedures. These procedures are available in Mexico City and throughout Colombia. The Commission noted that prior to these measures, changing the sex component on official forms could only be achieved through lengthy and onerous judicial procedures. These procedures called for psychiatric diagnoses and/or medical tests that pathologized trans persons. At the same time that the IACHR recognized these positive steps regarding administrative decrees, the IACHR urged both Mexico and Colombia to enact gender identity legislation.<sup>1199</sup>
421. The IACHR notes that there are certain countries in the region, such as Bolivia<sup>1200</sup> and Honduras,<sup>1201</sup> among others, that have specifically outlawed discrimination on the basis of sexual orientation and gender identity. In Chile, an anti-discrimination law was passed following the brutal and prejudice-motivated killing of Daniel Zamudio, referred to in chapter four of this Report.<sup>1202</sup> These legal initiatives have failed in other countries, either because they have not been proposed,<sup>1203</sup> or because once bills have been introduced, they have not been successful after years of debate.<sup>1204</sup> The IACHR does not have any information as to the specific impact

<sup>1197</sup> Redlactrans, "Informe sobre el Acceso a los Derechos Económicos, Sociales y Culturales, de la Población Trans en Latinoamérica y el Caribe." December, 2014 (p. 14), making reference to Uruguay's Gender Identity Law "N° 18.620 Derecho a la Identidad de Género y al Cambio de Nombre y Sexo en Documentos Identificatorios," Uruguay, Published on November 17, 2009 - N° 27858.

<sup>1198</sup> IGLHRC, Chile's Gender Identity Bill: two years later, May 8, 2015. See also, Frente de la Diversidad Sexual (Chile), Declaración Pública del Frente de la Diversidad Sexual, principal red de organizaciones LGBTI del Chile, sobre el anuncio del Ministro Secretario General de Gobierno Marcelo Díaz sobre darle suma urgencia al proyecto de Ley de Identidad de Género. September 19, 2015 (Available only in Spanish).

<sup>1199</sup> IACHR, Press Release No. 075/15, IACHR congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons, July 1, 2015.

<sup>1200</sup> In 2012, the Criminal Code of Bolivia was revised to criminalize acts of discrimination based on, among other grounds, sexual orientation and gender identity. Additionally, it constitutes an aggravated offense when such discrimination is committed with violence or when the discrimination is perpetrated by a State agent. Bolivian Criminal Code, Art. 281ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13, received by IACHR Executive Secretariat on December 23, 2013, p. 7.

<sup>1201</sup> In 2013, Honduras amended its criminal code to criminalize acts of discrimination based on sexual orientation and gender identity. Honduran Criminal Code, Art. 321 (as amended by Decreto Legislativo 23-2013, February 21, 2013); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6. According to information received by the IACHR, however, the proposed reform of the criminal code of 2015 would include amendments to this provision. Information presented by Red Lésbica Cattrachas, August 2015.

<sup>1202</sup> Chilean National Congress, Law No. 20.609 that establishes measures against discrimination. Published on July 24, 2012.

<sup>1203</sup> For example, according to information received by the IACHR, there are no laws that prohibit discrimination on the basis of sexual orientation or gender identity in the Dominican Republic. IACHR, Public Hearing Human Rights Situation of LGBT Persons in the Dominican Republic, 156<sup>th</sup> Period of Sessions, October 23, 2015.

<sup>1204</sup> For example, according to information received by the IACHR, a bill against discrimination that was presented before the Paraguayan Congress was rejected in November 2014, after seven years pending

that the passing of these laws has had on preventing and curtailing violence. However, these laws also have a symbolic impact, since they explicitly recognize the particular risks of discrimination that people face due to their sexual orientation, gender identity or bodily diversity.

### c. Ensuring that laws do not discriminate or fuel violence based on prejudice

422. The Commission has reiterated that the right to equality and non-discrimination in Article II of the American Declaration<sup>1205</sup> and Article 24 of the American Convention<sup>1206</sup> is a fundamental principle of the inter-American system of human rights. States are not only obligated to provide equal protection under the law for persons subject to the State's actions,<sup>1207</sup> but they must also adopt the legislative, public policy, and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration,<sup>1208</sup> and under the American Convention.<sup>1209</sup> The Inter-American Court has indicated that the general obligation set forth in Article 2 of the American Convention implies the adoption of measures to eliminate norms and practices that entail the violation of the guarantees set forth in the Convention, and the issuance of norms and the development of practices leading to the effective observance of those guarantees.<sup>1210</sup>
423. The Commission and the Inter-American Court have repeatedly established that the right to equal protection under the law and the principle of non-discrimination together imply that States are obliged to: (i) abstain from introducing into their

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approval. See *Abc Color*, "*Proyecto de Ley contra toda forma de discriminación*" January 26, 2015. Information also received in the context of a public hearing held before the IACHR in March 2015. IACHR, Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay, 154<sup>th</sup> Period of Sessions. March 17, 2015.

<sup>1205</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para 107; IACHR Report 40/04, Case 12.053, *Maya Indigenous Community*, Belize, October 12, 2004, para. 163; IACHR Report 67/06, Case 12.476, *Oscar Elias Bicet et al.*, Cuba, October 21, 2006, para. 228; IACHR, *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L.V/II.116 Doc. 5 rev. 1 corr., 22 October 2002, para. 335.

<sup>1206</sup> See, e.g., I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

<sup>1207</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Community*, Belize, October 12, 2004, para. 162.

<sup>1208</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para. 108; IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Community*, Belize, October 12, 2004, para. 162.

<sup>1209</sup> IACHR, Report No. 4/01, Case 11.625 *Maria Eugenia Morales de Sierra*, Guatemala, January 19, 2001.

<sup>1210</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03, *Juridical Condition and Rights of Undocumented Migrants*, Mexico, September 17, 2003 para. 167. The Inter-American Commission has stated that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See e.g., I/A Court H. R., Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights*, July 14, 1989, para. 37; I/A Court H. R., Advisory Opinion OC-16/99, *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, October 1, 1999, para. 115; IACHR, Report No. 12/14, Case 12.231, Merits (Publication). *Peter Cash*, Commonwealth of The Bahamas, April 2, 2014, paras. 58, 60.

legal frameworks regulations that are discriminatory or that have discriminatory effects on certain groups of the population; (ii) eliminate discriminatory regulations; (iii) combat discriminatory practices; and (iv) establish norms and adopt the necessary measures to acknowledge and guarantee the effective equality of all people under the law.<sup>1211</sup> These obligations apply to both States that have ratified the American Convention<sup>1212</sup> and States that have yet to ratify the American Convention.<sup>1213</sup>

424. As explained in Chapter 3 of this Report, there is a link between criminalization of certain types of sexual relations between consenting adults, and violence against LGBT persons, or those perceived as such. Further, in this Report, the IACHR has also examined the link between laws aimed at safeguarding “public morals,” or laws against soliciting, vagrancy, and loitering, and violence against LGBT persons or those perceived as such, which is mostly perpetrated by State agents, particularly violence in response to public displays of affection between same-sex couples and trans women, and against trans sex workers. As has been established by the IACHR, the right to equality before the law requires that the law be applied equally to all and without discrimination.<sup>1214</sup> This means that States must assess the potential discriminatory impact of laws and policies, even when their formulation or wording appears neutral.<sup>1215</sup>
425. The IACHR urges the States of the region that still have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws –aimed at criminalizing same-sex intimacy- and legislation criminalizing cross-dressing, to repeal those laws, or, in the interim, to impose an explicit and formal moratorium on enforcement of those laws. The IACHR also urges OAS Member States to revise any domestic legislation that includes vague language on “public morals” (*buenas costumbres*), which can be used to justify discriminatory targeting of LGBT persons, particularly trans persons. The IACHR also urges all States to issue specific directives to all law enforcement agents,

<sup>1211</sup> IACHR, *The Situation of People of African Descent in The Americas*, 2011, para. 194.

<sup>1212</sup> IACHR, *The Situation of People of African Descent in The Americas*, 2011, para. 194, citing I/A Court H. R., *Yean and Bosico Girls v. Dominican Republic* Case. Judgment of September 8, 2005. Series C No. 130, para. 141; I/A Court H. R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, para. 88, cited at I/A Court H. R., *López Álvarez v. Honduras* Case. Judgment of February 1, 2006. Series C No. 141, para 170; I/A Court H. R., *Juridical Condition and Human Rights of Children*. Advisory Opinion OC-17/02 August 28, 2002. Series A No. 17, para. 44; I/A Court H. R., *Proposal for the modification of the Political Constitution of Costa Rica Related to Naturalization*. Advisory Opinion OC-4/84 of January 19 1984. Series A No. 4, para. 54; I/A Court H. R., *Yatama v. Nicaragua* Case. Judgment of June 23, 2005. Series C No. 127, para. 185.

<sup>1213</sup> IACHR, *The Situation of People of African Descent in The Americas*, 2011, para. 194, citing IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para 109. IACHR, Report N° 67/06, Case 12.476, *Oscar Elías Bicet et al.*, Cuba, October 21, 2006, paras. 228-231; IACHR Report N° 40/04, Case 12.053, *Maya Indigenous Community*, Belize, October 12, 2004, paras. 162 and 166.

<sup>1214</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para. 109. IACHR, Report No. 57/96, Case 11.139, *William Andrews*, United States, December 6, 1996, para. 173.

<sup>1215</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, para. 109. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 90.

reaffirming that violence, abuse, and discrimination based on sexual orientation, gender identity, or gender expression, will be punished.

### 3. Eradication of stigma and negative stereotypes

426. As explained in chapter two of this Report, violence perpetrated against LGBT persons is rooted in pervasive social prejudice present in societies across the Americas. An important component of a State's response to violence against LGBT persons is addressing the underlying social discrimination against such persons. Further, as examined in the previous chapter, violence against intersex persons stems from the lack of acceptance towards bodily diversity. Achieving increased understanding and respect toward diverse sexual orientations, gender identities and bodies will consequently reduce and eventually eradicate acts of violence against LGBTI persons. States need to implement measures to address and eradicate prejudice at all levels and through various mechanisms. The UN Human Rights Committee has indicated that States should prioritize the implementation of programs to eliminate stereotyping and discrimination and guarantee respect for diversity.<sup>1216</sup>
427. The Inter-American Commission notes that there is a prevailing culture of tolerance where acts of violence and attacks against LGBT persons are deemed normal. It has even been alleged that many people feel "entitled" to attack LGBT persons.<sup>1217</sup> One state informed the Commission that violence against LGBT persons tends to be "accepted" by society, and is sometimes even treated in a humorous way by the mass media.<sup>1218</sup>
428. The IACHR has indicated that standards and principles of human rights are both a guide and a roadmap for designing, implementing, and evaluating public policies.<sup>1219</sup> State policies directed at educating the public about human rights with a gender and diversity perspective should not be restricted to educational environments. Rather, they should be crosscutting in every field in which the State operates. The principles of equality and non-discrimination, with a special focus on sexual, gender and bodily diversity, should be a key element of such policies.
429. The Commission takes note of an increasing number of public policies and other measures, such as those taken by National Human Rights Institutions, that have been adopted in the past ten years by OAS Member States in favor of LGBTI persons. Since 2004, the State of Brazil has implemented initiatives to combat violence at the national level, such as "Brazil without Homophobia" (*Brasil sem Homophobia*), "General Secretariat for the Promotion of Rights of Lesbian, Gay, Bisexual, and Trans Persons" (*Coordenação-Geral de Promoção dos Direitos de*

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<sup>1216</sup> Human Rights Committee, *Concluding observations: Paraguay*, CCPR/C/PRY/CO/3, 26 March 2013, para. 9.

<sup>1217</sup> IACHR, *Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas*, Washington DC, 24-25 February, 2012.

<sup>1218</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268, received by IACHR Executive Secretariat on October 9, 2014, p. 3.

<sup>1219</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, paras. 52-53.

*Lésbicas, Gays, Bissexuais, Travestis e Transexuais*), and the “National System to Face Violence against LGBT persons and to Promote Rights” (*Sistema Nacional de Enfrentamento à Violência contra LGBT e Promoção dos Direitos*).<sup>1220</sup> Further, civil society has highlighted the National Campaign for “a country free from homophobia” (“Campanha Faça do Brasil um País Livre da Homofobia”), which aims at promoting the rights of LGBT persons and raising the awareness of NGOs and State agents regarding the situation of violence against LGBT persons.<sup>1221</sup>

430. The IACHR also acknowledges the creation of a specialized Office of the Ombudsperson on Sexual Diversity in Nicaragua<sup>1222</sup> and an Office of the Ombudsperson on the Rights of LGBTI Persons in Guatemala.<sup>1223</sup> Further, the Commission values that the State of Guatemala included the development and promotion of public policies focused on “sexual diversity” issues in its Human Rights Action Plan (2007-2017).<sup>1224</sup> Guatemalan civil society organizations<sup>1225</sup> and the Guatemalan State<sup>1226</sup> have indicated that, following a public hearing that took place before the IACHR in November 2012, the State began a process of dialogue with civil society organizations through an “Inter-Institutional Technical Group” (“*mesa técnica interinstitucional*”), with the objective of designing and adopting public policies that are respectful of the rights of LGBTI persons, in consultation with civil society.<sup>1227</sup> Further, the Commission was informed that in 2010 the State of El Salvador created a Sexual Diversity Division at the Secretary of Social Inclusion, within the Executive Branch.<sup>1228</sup> Its objectives include awareness-raising campaigns to eliminate stereotypes and prejudices.<sup>1229</sup> Further, former First Lady of El Salvador, together with the Secretary for Social Inclusion, has launched a 24-hour hotline that provides legal assistance and counseling to the LGBTI people.<sup>1230</sup>
431. The IACHR notes as well that numerous National Human Rights Institutions in the Americas have carried out actions in favor of LGBTI persons, whether in the form of public statements in support of LGBTI persons, or specific actions to raise

<sup>1220</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 1.

<sup>1221</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.

<sup>1222</sup> El Nuevo Diario, “*Procuradora especial de diversidad sexual*” November 30, 2009 (Available only in Spanish).

<sup>1223</sup> Office of the Ombudsperson, “*Defensoría de la Diversidad Sexual*,” functioning since April 2014.

<sup>1224</sup> “*Plan de Acción Nacional en Derechos Humanos 2007-2017*,” presented by Guatemala to Office of the United Nations High Commissioner for Human Rights, September 2007.

<sup>1225</sup> Information provided by the organization *Otrans Reinas de la Noche*, available at: <http://reinasdelanoche.org.gt/main.asp?clc=1555> (Available only in Spanish).

<sup>1226</sup> IACHR, Press Release No. 86/14, *IACHR Wraps Up its 152<sup>nd</sup> Special Session*, August 15, 2014.

<sup>1227</sup> Information presented to the IACHR at the hearing regarding Guatemala, during the extraordinary period of sessions held in Mexico City in August 2014.

<sup>1228</sup> Sexual Diversity Section, Social Inclusion Secretariat of the Office of the President of El Salvador.

<sup>1229</sup> Asociación 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 Latin American and Caribbean Network of Trans persons: “*La Situación de los Derechos Humanos de las Personas Lesbianas, Gays, Bissexuales y Transgenero en El Salvador, Informe Alterno sometido al Comité de Derechos Humanos de las Naciones Unidas*,” October, 2010, p. 7.

<sup>1230</sup> Social Inclusion Secretariat “*Sis lanza call center 131 para atención y asistencia en diversidad sexual*”. May 17, 2013 (Available only in Spanish).

awareness about their human rights violations. For example, the Commission has received information regarding actions by these institutions in Colombia,<sup>1231</sup> Costa Rica,<sup>1232</sup> Ecuador,<sup>1233</sup> El Salvador,<sup>1234</sup> Guatemala,<sup>1235</sup> Peru,<sup>1236</sup> and Venezuela.<sup>1237</sup>

432. The IACHR has acknowledged that in recent years Colombia has adopted positive and meaningful measures in support of LGBTI persons, and is close to adopting a comprehensive national public policy in this regard.<sup>1238</sup> The IACHR notes also the activities of the National Human Rights Commission of Mexico (CNDH), which in 2008 and 2010 published reports regarding crimes based on sexual orientation and gender identity, and organized a series of conferences beginning in 2012 to promote awareness of the issues affecting LGBTI persons.<sup>1239</sup> The IACHR has also recognized the efforts made by the National Center for Sex Education (CENESEX), a Cuban state entity under the Ministry of Health that addresses issues of sexual diversity with a view to promoting and protecting the rights of LGBTI persons.<sup>1240</sup> According to Mariela Castro, the director of CENESEX, there is political will in Cuba to address the issues facing LGBTI persons. This has facilitated the implementation of a national sex education program that is helping to change the “patriarchic, homophobic mindset.”<sup>1241</sup> The Argentinean National Institution against Discrimination, Racism and Xenophobia (INADI) has also been very active in promoting the rights of LGBTI persons.<sup>1242</sup>
433. The UN Human Rights Committee has recommended to several OAS Member States that they publicly state that they will not tolerate social stigmatization,

<sup>1231</sup> Noticias RCN. “*Defensoría: Corte contaba con elementos suficientes para permitir adopción gay sin restricciones*”. February 19, 2015. (Available only in Spanish).

<sup>1232</sup> The Ombudsperson Office of Costa Rica declared May 17, 2014, as a day free from discrimination based on sexual orientation and gender identity, and called on other State agencies to do the same. Further, in 2015, the Ombudsperson Office launched a campaign under the phrase “count on me” (<http://www.contaconmigocr.org/>), which features a series of clips of relatives of gay and lesbian persons in Costa Rica expressing their full support and calling for other persons to sign on (Link available only in Spanish).

<sup>1233</sup> In 2013, the Ombudsman of Ecuador issued a series of public statements in favor of LGBT persons, available only in Spanish in the Ombudsman’s web site: <http://www.dpe.gob.ec/>.

<sup>1234</sup> In 2015, the Ombudsperson condemned the murder of Francela Méndez, activist and defender of the human rights of trans persons in El Salvador. La Prensa Gráfica, “*Procurador condena asesinato de activista transgénero en Sonsonate*”, June 4, 2015. In addition, the Ombudsperson –and civil society organizations- is part of a Permanent Group on to examine the human rights of LGBTI persons (“Mesa Permanente”).

<sup>1235</sup> See the different initiatives by the Office of the Ombudsperson of Sexual Diversity, within the Office of the Ombudsperson of Guatemala (“*Defensoría de la Diversidad Sexual adscrita a la Procuraduría de los Derechos Humanos*”), available at [www.pdh.org.gt](http://www.pdh.org.gt) (in Spanish only).

<sup>1236</sup> In July 2014, the Ombudsman sent a letter to the Minister of Justice and Human Rights to express his concern over the exclusion of LGBT persons from the 2014-2016 National Human Rights Plan. On September 2014, the IACHR sent a letter to the government requesting information on this same issue.

<sup>1237</sup> IACHR, Annual Report 2014, Chapter IV: Venezuela. IACHR, Annual Report 2013, Chapter IV: Venezuela.

<sup>1238</sup> See IACHR, Follow-up Report to Truth, Justice and Reparations: Fourth Report on Human Rights Situation in Colombia, May 7, 2015. See also IACHR, Truth, Justice and Reparation: Colombia, 2013.

<sup>1239</sup> CNDH, “*Informe Especial sobre Violaciones a los derechos humanos y delitos cometidos por Homofobia*,” 2010 (Available only in Spanish).

<sup>1240</sup> IACHR, Annual Report 2013, Chapter IV: Cuba, para. 216. IACHR, Annual Report 2014, Chapter IV: Cuba, para. 292.

<sup>1241</sup> IACHR, Annual Report 2013, Chapter IV: Cuba, para. 222.

<sup>1242</sup> Information about the National Institute against Discrimination, Xenophobia and Racism available only in Spanish at: <http://inadi.gob.ar/tag/derechos-lgbt/>.

discrimination, or violence based on a person's sexual orientation or gender identity.<sup>1243</sup> Indeed, the IACHR stresses that this message should permeate every State action and should be reflected in how State agents respond to such violence, including also violence directed at intersex persons. The IACHR has affirmed that positive public statements by State authorities are key in combating stigmatization of LGBTI persons, since States play a crucial role in leading social change to combat discrimination and social prejudices.<sup>1244</sup>

434. In November 2013 and May 2014, the IACHR highlighted a series of positive statements issued by high level authorities –including Heads of State and Ministers– in various Commonwealth Caribbean countries where same-sex intimacy between consenting adults is criminalized. These included statements made by heads of state, in countries such as Belize,<sup>1245</sup> Barbados,<sup>1246</sup> Jamaica,<sup>1247</sup> The Bahamas,<sup>1248</sup> and St. Kitts and Nevis.<sup>1249</sup> The IACHR greatly values the commitment of State officials who take a public stance in favor of equality in

<sup>1243</sup> Human Rights Committee, *Concluding observations: Plurinational State of Bolivia*, CCPR/C/BOL/CO/3, 6 December 2013, para. 7; Human Rights Committee, *Concluding observations: Peru*, CCPR/C/PER/CO/5, 27 March 2013, para. 8; Human Rights Committee, *Concluding observations: Dominican Republic*, CCPR/C/DOM/CO/5, April 19, 2012, para. 16; Human Rights Committee, *Concluding Observations: Guatemala*, CCPR/C/GTM/CO/3, April 19, 2012, para. 11.

<sup>1244</sup> IACHR, Press Release No. 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1245</sup> The IACHR noted that the IACHR was pleased to receive information regarding a statement delivered by the Prime Minister of Belize, Dean Oliver Barrow, indicating that although the Government of Belize would respect religious positions regarding homosexuality, “what [the] Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law.” IACHR, Press Release No. 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

<sup>1246</sup> The IACHR noted that the Prime Minister of Barbados, the Honorable Mr. Freundel Stuart, recalled the importance of the Universal Declaration on Human Rights and supported “the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation.” IACHR, Press Release No. 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1247</sup> The IACHR noted that the Honorable Youth Minister in Jamaica, Lisa Hanna, announced at the beginning of 2014 that the government was developing programs focused on LGBTI youth. IACHR, Press Release No. 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014. Further, the IACHR highlighted that the Minister of Justice in Jamaica condemned the 2013 killing of a trans teenager, Dwayne Jones, and called upon Jamaicans to “embrace the principle of respect for the basic human rights of all persons.” IACHR, Press Release No. 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

<sup>1248</sup> The IACHR noted that the Honorable Mr. Frederick Mitchell, Minister of Foreign Affairs and Immigration of The Bahamas, said that the sexual orientation of a person seeking elected office should not be relevant. He added that “there must be tolerance at a minimum and we must uphold the principle that the general rights for which we fought [are] rights for all people... [and] cannot be derogated from because of someone's sexual orientation.” IACHR, Press Release No. 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1249</sup> The IACHR welcomed the statement delivered by the Prime Minister of St. Kitts and Nevis, Denzil Douglas, speaking against discrimination and stigmatization of LGBTI persons. IACHR, Press Release No. 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

contexts in which prejudice, discrimination, and violence against LGBT persons are widespread.<sup>1250</sup>

435. The IACHR has launched two social media campaigns to raise awareness of the rights of LGBTI persons and the human rights violations that are committed against them. On December 17, 2014, the IACHR launched a ten-day campaign on various social media platforms concerning violence against LGBTI persons. This included graphics<sup>1251</sup> and three videos,<sup>1252</sup> featuring a compilation of clips of IACHR hearing testimony by victims and human rights defenders regarding the human rights situation of LGBTI persons. The second weeklong social media campaign was launched to coincide with the 2015 International Day against Homophobia, Biphobia and Transphobia, celebrated each year on May 17.<sup>1253</sup> The two campaigns together reached approximately 1,760,000 users of Spanish-language Facebook and Twitter in the Americas. International human rights mechanisms have also carried out awareness-raising campaigns. For example, in July 2013, the UN High Commissioner on Human Rights launched a global education campaign to combat violence and discrimination against LGBT persons,<sup>1254</sup> which, according to the UN, has reached more than a billion people around the world.<sup>1255</sup>
436. Finally, the Commission has underscored the importance of involving civil society in the development of public policies to address the human rights of LGBTI persons.<sup>1256</sup> As the UN High Commissioner on Human Rights has pointed out, LGBTI organizations, groups, and individuals should be systematically consulted and made part of decision-making processes in the drafting of policies and legal provisions that affect their rights.<sup>1257</sup>

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<sup>1250</sup> IACHR, Press Release No. 89/13 *IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons*, November 21, 2013.

<sup>1251</sup> IACHR, *Social Media Campaign*, to raise awareness of the human rights situation of LGBTI persons (December 2014) (only available in Spanish).

<sup>1252</sup> These videos (with Spanish, English and Portuguese subtitles) are available at: <https://www.youtube.com/user/ComisionIDH>.

<sup>1253</sup> IACHR, *Second Social Media Campaign*, launched in May 2015, in commemoration of the International Day against Homophobia, Biphobia and Transphobia.

<sup>1254</sup> UN Free & Equal Campaign, available at: [www.unfe.org](http://www.unfe.org).

<sup>1255</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 6.

<sup>1256</sup> IACHR, Press Release 9/13, *IACHR Concludes Its Working Visit to Suriname*, February 12, 2013; See also: IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 58. See also, IACHR, Press Release No. 75/15, *IACHR congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons*, July 1, 2015.

<sup>1257</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para. 19. See *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona* A/HRC/23/36/Add.2, para. 97; *Concluding observations of the Committee on the Elimination of Discrimination against Women* CEDAW/C/DEU/CO/6, para. 61; *Concluding observations on the fourth periodic report of Ireland* CCPR/C/IRL/CO/4, para. 7.

## 4. Prevention of violence in specific contexts

### a. Prevention of violence in the context of law enforcement

437. Under international law a State is responsible for the acts and omissions of its agents, even when those agents act illegally or otherwise outside the permitted sphere of their authority.<sup>1258</sup> Thus, any violation of the rights that are recognized by the American Convention (or the American Declaration) that is carried out by an act of public authority or by persons who use their position of authority is imputable to the State.<sup>1259</sup>
438. In order to prevent violence, States need to ensure that their justice systems are able to fully and effectively investigate all instances of police abuse and all instances of torture, and cruel, inhuman, or degrading treatment. States must exercise due diligence in investigating violence that is based on prejudice, since impunity for human rights violations fosters their repetition. The IACHR has repeatedly highlighted the need for States to train their police and law enforcement agents regarding human rights.<sup>1260</sup> Such training must take into account the rights of persons with non-normative sexual orientations and gender identities.<sup>1261</sup> Further, States must ensure that all ranks of police officers and law enforcement agents participate in the training.<sup>1262</sup> The lack of sensitivity training for police and law enforcement agents on the topics of gender and sexuality is one of the most serious challenges in the efforts to eradicate prejudice-based violence by State actors in the Americas.
439. According to the information received by the IACHR, training sessions for security and police agents on sexual and gender diversity have been carried out in various

<sup>1258</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, Series C, No. 4, para. 170. I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003, Series A No. 18, para. 76.

<sup>1259</sup> I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, Series C, No. 4, para. 172.

<sup>1260</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013, para. 976(1); IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 67; *Access to justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 226; *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, para. 231; *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, December 29, 2003, para. 98; *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100 Doc. 7 rev. 1, September 24, 1998, para. 705; *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97 Doc. 29 rev.1, September 29, 1997, Chapter III, para. 36.

<sup>1261</sup> See, for example, IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, 10 August 2012, para. 305(d).

<sup>1262</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc.12, OEA/Ser.L/V/II.144 Doc. 12, August 10, 2012, para. 305(d). Further, the IACHR has received information concerning the challenges of implementing Directive 006/2010, which is aimed at preventing police abuse in Colombia. According to the information provided by civil society organizations, officers who were designated as the link between the police forces and members of the LGBTI community, pursuant to the Directive, were often low-ranking agents. Further, reportedly, training was provided to “desk agents” but not to those agents who conduct street patrols. Meetings between then-IACHR President, Tracy Robinson and LGBT organizations from the Caribbean region of Colombia (and from Cali and Tumaco). Meetings held on Cartagena, Colombia. October 3, 2014. See also, IACHR, *Annual Report 2014: Chapter V: Follow-up Report to Truth, Justice and Reparations: Fourth Report on Human Rights Situation in Colombia*, May 7, 2015.

OAS Member States.<sup>1263</sup> This includes a series of police trainings that have taken place in Caribbean countries in recent years, namely Barbados,<sup>1264</sup> Jamaica,<sup>1265</sup> St. Kitts and Nevis,<sup>1266</sup> St. Lucia,<sup>1267</sup> and Suriname.<sup>1268</sup>

440. The Inter-American Commission urges OAS Member States to enhance their efforts in training law enforcement personnel to refrain from abuses and violence based on prejudice. This training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing. Trainees should become familiar with local trends of violence that are based on prejudice, and should be made aware of the existence of groups, where they are present, that may specifically target people with non-normative sexual orientations or gender identities. Further, the IACHR urges OAS Member States to conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBTI persons who are deprived of liberty. Further, States must ensure that there are independent mechanisms to receive complaints in cases of torture, cruel, inhuman and degrading treatment, police abuse and other acts of violence by law enforcement agents and to ensure that they are effectively investigated.

## b. Prevention of violence in the health sector

441. As highlighted in the previous chapter, the IACHR has received information on violence in the context of health care settings. The IACHR stresses that the reality of violence perpetrated by medical and non-medical personnel in public hospitals is a matter of serious concern. These are places in which persons in need of medical care should be able to obtain assistance, and should not be the setting of further violence. The UN Human Rights Committee has expressly recommended that States guarantee equal rights to access health care to all individuals regardless of their

<sup>1263</sup> [Brazil] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013; [Colombia] State of Colombia, Response to the request for information: alleged instances of police abuse against trans women in Cali, Cartagena and Barranquilla, Note MPC/OEA No. 1509/2014, October 20, 2014; [Cuba] Information presented by civil society organizations during the public hearing “Human Rights Situation of LGBT persons in Cuba,” 156<sup>th</sup> Period of Sessions, October 19, 2015; [Nicaragua] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 7; [Paraguay] Information presented by the State during the public hearing “Reports of Violence against Trans Persons and Impunity in Paraguay,” held on March 27, 2015, 154<sup>th</sup> Period of Sessions; [Peru] Instituto de Desarrollo y Estudios de Genero “RUNA,” *Informe de derechos humanos sobre la población trans (transexuales, travestis, transgénero) en la ciudad de Lima (Informe 2008)*, January 2009, p. 4, and Miraflores, “*Capacitación contra la Discriminación*,” March 18, 2013 (Available only in Spanish); [United States of America] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), p. 11; [Venezuela] Defensoría del Pueblo de la República Bolivariana de Venezuela, *Informe Annual 2010*, March 2011, p. 340.

<sup>1264</sup> Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.

<sup>1265</sup> Jamaica Observer, *Police sharpen to work with vulnerable groups*, June 22, 2015. See also, response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Jamaica, Note 6/80/1 dated December 3, 2013, received by IACHR Executive Secretariat on December 16, 2013, p. 3.

<sup>1266</sup> SKNVibes, *Security personnel participate in LGBT sensitivity training*, June 14, 2015.

<sup>1267</sup> Saint Lucia Star, *Police Schooled In Sensitivity Towards Gays*, September 2, 2013.

<sup>1268</sup> Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.

sexual orientation; and has called for awareness-raising programs to be launched to combat social prejudice.<sup>1269</sup>

442. The Pan American Health Organization has developed important blueprints to guide clinicians and health administrators in Latin America and the Caribbean, in both the general health sector as well as within specialized health clinics, in order to strengthen the ability of health care providers to address the distinct health needs of gay men (and other men who have sex with men),<sup>1270</sup> as well as trans persons,<sup>1271</sup> within the context of health promotion and health care delivery. These guidelines also address prevention, detection, and general measures to address violence against gay men, men who have sex with men, and trans persons.
443. Health care professionals should receive continuous training on matters of sexual, gender and bodily diversity. States should ensure that principles of medical ethics are respected and that health services are provided without discrimination, including on the basis of sexual orientation, gender identity, or gender expression. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.
444. With respect to “therapies” which attempt to change the sexual orientation or gender identity of persons with non-normative sexualities or gender identities or expression, often in the absence of their informed consent, the IACHR recommends that OAS Member States undertake measures to ensure that the regulatory entity of the health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer these services. Further, States shall adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject. In general terms, practices that cause harm to the physical, mental and social health should not be accepted as medical therapy.
445. Regarding the rights of intersex people, the IACHR welcomes the position adopted in 2013 by the National Institute Against Discrimination, Xenophobia and Racism of the Ministry of Justice, Security and Human Rights of Argentina, which has affirmed that intersex persons have the right to physical integrity and to self-determination of their own bodies, and that all medical protocols must ensure the right to free, prior, and informed consent.<sup>1272</sup> The Commission also welcomes a set of guidelines issued by the Ministry of Health of the Province of Buenos Aires (Argentina, which specifically address the issue of surgeries on intersex children and expressly incorporates conclusions from the First International Intersex

<sup>1269</sup> Human Rights Committee, *Concluding observations: Chile*, CCPR/C/CHL/CO/5, May 18, 2007, para. 16.

<sup>1270</sup> PAHO, *Blueprint for the Provision of Comprehensive Care to Gay Men and Other Men who have sex with Men (MSM) in Latin America and the Caribbean* (based on a consultation conducted in July 2009, Panama), at p. 20.

<sup>1271</sup> PAHO, *Blueprint for the Provision of Comprehensive Care to Gay Men and Other Men who have sex with Men (MSM) in Latin America and the Caribbean* (based on a consultation conducted in July 2009, Panama).

<sup>1272</sup> National Institute against Discrimination, Xenophobia and Racism (INADI) “*Intersexualidad: el INADI contra la violencia del sistema binario de sexo y de género*,” February 25, 2013 (Available only in Spanish).

Forum as recommendations.<sup>1273</sup> According to information received by the Commission, the Ministry of Health has conducted trainings in hospitals based on these guidelines.<sup>1274</sup>

446. The IACHR takes note of positive developments in jurisprudence in several countries in the Americas. For example, in its most recent consideration of issues relating to intersex persons, the Constitutional Court of Colombia held that intersex children should decide themselves, via their free and informed consent, whether or not they want to undergo surgery, given the right “to free development of one’s personality, sexual identity and personal autonomy.”<sup>1275</sup> Among other recommendations, the Court urged the Ministry of Health to “develop guidelines and official medical protocols” to effectively address the birth of intersex persons, including the mandatory establishment of a multidisciplinary team including a social worker and a psychologist to provide assistance to intersex persons and their families.<sup>1276</sup> In the United States, a local intersex organization filed lawsuits in state and federal courts in South Carolina on behalf of “M.C.,” a 16-month-old intersex boy who had been subjected to irreversible genital surgery while in state custody in an effort to make his body appear female. The organization alleges that, following the state’s actions, “M.C. has since grown into a healthy 8-year-old boy, although he will never get back the phallus and testicle that were removed.”<sup>1277</sup>
447. Since 2013, the OAS General Assembly has urged OAS Member States to afford appropriate protection to intersex people and to implement policies and procedures, as appropriate, to ensure that medical practices are consistent with applicable human rights standards.<sup>1278</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also called upon all States to repeal any law allowing intrusive and irreversible treatments, including forced “genital-normalizing” surgery, when enforced or administered without the free and informed consent of the person concerned.<sup>1279</sup>
448. The IACHR notes that the principle of autonomy, expressed through full, free, and informed decision-making, is embodied in human rights law.<sup>1280</sup> The UN Special Rapporteur on the right to health referred to the importance of informed consent

<sup>1273</sup> Gender Policies Area of the Health Ministry of the Buenos Aires Province, “*Guía para Personal de Salud sobre Salud Sexual y Reproductiva y Prevención de la Violencia hacia Población LGTB,*” 2012, pp. 12, 21, 22 (Available only in Spanish). International Intersex Forum, *Media release: First Ever International Intersex Forum*, Brussels, Belgium, September 5, 2011.

<sup>1274</sup> Health Ministry of the Buenos Aires Province, “*Más de 40 profesionales se capacitaron sobre diversidad sexual en el hospital Carrillo,*” September 19, 2012 (Available only in Spanish).

<sup>1275</sup> Colombian Constitutional Court, *Decision T-622/14*, August 28, 2014, first paragraph of 2.4 (Available only in Spanish).

<sup>1276</sup> Colombian Constitutional Court, *Decision T-622/14*, August 28, 2014, seventh resolution (Available only in Spanish).

<sup>1277</sup> Advocates for Informed Choice (AIC), *AIC announces important first victory in MC case!*, August 26, 2013.

<sup>1278</sup> AG/RES. 2807 (XLIII-O/13), *Human Rights, Sexual Orientation, And Gender Identity And Expression*, adopted at the fourth plenary session, held on June 6, 2013.

<sup>1279</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53, 1 February 2013, para. 88.

<sup>1280</sup> Office of the High Commissioner for Human Rights, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and the World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, p. 9.

- for intersex persons and recommended that health-care providers strive to postpone non-emergency invasive and irreversible interventions until the child has sufficient maturity to provide informed consent.<sup>1281</sup> Further, in a 2015 Report the Commissioner for Human Rights of the Council of Europe stated that “sex assignment treatment should be available to intersex individuals at an age when they can express their free and fully informed consent.”<sup>1282</sup>
449. The Commission notes that specific safeguards for intersex children must be incorporated into legal instruments and medical protocols to protect and ensure the right of intersex children to informed consent. Further, training must be conducted with relevant stakeholders. A 2014 statement by several UN agencies affirmed that health-care professionals should be “educated and trained about bodily diversity as well as sexual and related biological and physical diversity, and that professionals should properly inform patients and their parents of the consequences of surgical and other medical interventions.”<sup>1283</sup>
450. The IACHR recommends that OAS Member States and protocols that call for non-medically necessary interventions on intersex children without their full, prior and informed consent. These surgeries should be postponed until the concerned person is able to provide full, prior, and informed consent, and a decision to not undergo such procedure should be respected. Non-intervention should not hinder or delay registration of birth with relevant State authorities. Further, given the need to eradicate stigma around intersex persons, OAS Member States should strive to raise awareness around human rights violations faced by intersex persons, through policies and programs that sensitize the general public and the medical community. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics be revised and modified with the purpose of ensuring that intersex persons effectively enjoy the highest attainable standard of health and other human rights.
451. Further, OAS Member States must respect the right to privacy of intersex persons. As such, intersex persons should not be a constant target of medical photography and unnecessary genital exams for non-consensual research. Additionally, OAS Member States must provide support to intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood. The IACHR strongly recommends that OAS Member States consult with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.
452. Therefore, the IACHR urges all OAS Member States to take steps to design and implement public policies that ensure the right of lesbian, gay, bisexual, trans and

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<sup>1281</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, para. 46.

<sup>1282</sup> Council of Europe, Commissioner for Human Rights, Issue Paper: *Human Rights and Intersex People*. Silvan Agius, May 12, 2019, p. 9.

<sup>1283</sup> Office of the High Commissioner for Human Rights, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and the World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, p. 10.

intersex persons to access health care services without being subject to discrimination, violence, or ill-treatment.

### c. Prevention of violence in the education sector

453. The Commission has condemned acts of intimidation and harassment in educational environments, and has urged OAS Member States to adopt and enforce effective measures to prevent violence and discrimination against LGBTI persons in both public and private educational institutions.<sup>1284</sup> The UN Committee on the Rights of the Child has expressed concern about discrimination against children on the basis of sexual orientation and gender identity and has urged States to ensure that educational programs address the situation of discrimination against children based on sexual orientation and gender identity.<sup>1285</sup>
454. States must ensure that their education policies are designed to change social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them.<sup>1286</sup> Indeed, the IACHR has reaffirmed the key role that education plays in the promotion and protection of human rights, by encouraging cultural change that fully embraces diversity and promotes acceptance of diverse sexual orientations and gender identities.<sup>1287</sup>
455. One of the key measures that States should implement is comprehensive sexuality education in school curricula, which includes a perspective on bodily, sexual and gender diversity. The UN High Commissioner on Human Rights has affirmed that limiting or obstructing information related to sexuality, or using materials that contain stereotypes and prejudices concerning LGBTI persons, can contribute to violence. Conversely, comprehensive sexuality education can be a tool to combat discrimination.<sup>1288</sup> The UN Special Rapporteur on the Right to Education has stressed that comprehensive sexuality education is a basic tool for ending discrimination against LGBTI persons and that it “must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity.”<sup>1289</sup> In this regard, UNESCO has added that “information should cover non-discrimination, equality and gender roles, and sexual diversity.”<sup>1290</sup>

<sup>1284</sup> IACHR, Press Release No. 92/13, , *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>1285</sup> Committee on the Rights of the Child, *Concluding Observations: Guyana*, CRC/C/GUY/CO/2-4, 18 June 2013, para. 25.

<sup>1286</sup> IACHR, Press Release 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013. See also, IACHR, Press Release 68/13, *IACHR Holds Regional Meeting on Education, Culture, and Rights of LGTBI Persons*, September 19, 2013.

<sup>1287</sup> IACHR, Press Release 92/13, *The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings*, November 22, 2013.

<sup>1288</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 57.

<sup>1289</sup> *Report of the United Nations Special Rapporteur on the right to education*, A/65/162, July 23, 2010, para. 23.

<sup>1290</sup> UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 42.

456. As is the case with violence prevention in general, data collection is a key element in the design of policies to prevent violence in educational environments. Consequently, UNESCO has urged States to strengthen their evidence base by collecting data on the nature and scale of the problem of bullying in educational institutions that is based on sexual orientation and gender identity, and its impact on educational goals.<sup>1291</sup> The IACHR has been informed of some initiatives in this regard that have been undertaken by the ministries of education in countries such as Brazil<sup>1292</sup> and the United States.<sup>1293</sup> Further, in 2008, several ministries of education in the region signed a declaration on "Preventing through education." This declaration expressly contemplates the implementation of multi-sectoral strategies of comprehensive sexuality education with a broad human rights perspective, including gender aspects as well as topics related to the diversity of sexual orientations and gender identities.<sup>1294</sup>
457. The Commission notes that UNESCO has recommended a crosscutting strategy to prevent bullying of this nature, including using evidence to raise the awareness of key stakeholders (education officials, teachers' associations, community leaders, and parents) about the nature, scale, and impact of bullying against LGBTI persons.<sup>1295</sup> UNESCO has identified a number of key skills in which teachers and school authorities should be specifically trained, which include teaching skills to address bullying, and the facilitation of age-appropriate classroom discussion of sexuality, among others.<sup>1296</sup> The IACHR emphasizes that sensitization and training play a key role in the prevention of violence against LGBTI persons in educational environments.

## ***B. The State's Obligation to Investigate, Prosecute and Punish Crimes committed against LGBTI Persons***

### **1. The obligation to Ensure Access to Justice**

458. The IACHR has defined access to justice as a *de jure* and *de facto* access to judicial bodies and remedies for protection.<sup>1297</sup> The Commission has stated that the right to an effective judicial remedy must be understood as the right of every person to

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<sup>1291</sup> UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 27.

<sup>1292</sup> In Brazil, the implementation plan of the Ministry of Education includes the "Schools without Homophobia" program, which involves transforming curricula to include sexual and gender diversity perspectives, training, and maintaining safe spaces for students in classrooms. UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 32.

<sup>1293</sup> The IACHR has been informed that the US Department of Education's National Center for Education Statistics (NCES) compiles data on violence in schools. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), pp. 3, 5, 12, 28.

<sup>1294</sup> First Meeting of Ministers of Education and Health to Stop HIV and STIs in Latin America and the Caribbean, *Ministerial Declaration: Preventing through education*, August 1, 2008, para 3.2.

<sup>1295</sup> UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 26.

<sup>1296</sup> UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 42.

<sup>1297</sup> IACHR, *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 5.

access a tribunal when any of his or her rights “have been violated (whether a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.”<sup>1298</sup>

459. Access to justice is essential to the eradication of violence against LGBTI persons. It is a necessary component of States’ compliance with their international obligation to apply due diligence in responding to human rights violations. In this regard, the IACHR acknowledges certain initiatives aimed at ensuring access to justice that have been undertaken by OAS Member States. For example, the City of Buenos Aires created a specific office within the Observatory of Gender Issues with a mandate to propose initiatives to remove obstacles to access to justice for LGBTI persons.<sup>1299</sup> In Colombia, the “Group for Urgent Cases” was created in 2012 to identify and follow up on cases of violence against LGBTI persons.<sup>1300</sup> In Chile, the Office for the Prevention of Crime (“Subsecretaria de Prevención del Delito”) within the Ministry of the Interior expressly included a section on sexual diversity in the plan of action for its Program for the Support of Victims (“Programa de Apoyo a Víctimas”), as a result of an agreement with civil society.<sup>1301</sup>
460. However, in general terms, the IACHR has found that LGBT persons encounter numerous specific barriers — in addition to difficulties that they face in common with the general population — when they seek justice. These include: lack of adequate attention and treatment when they attempt to report crimes; negligent and biased attitudes of law enforcement personnel; stereotyped assumptions about the motives for crimes, based on the victim’s sexual orientation, gender identity, or gender expression; increased fear of further victimization or retaliation, which acts as a serious deterrent against reporting crimes; lack of specialized legal aid programs; existence of legislation criminalizing same-sex intimacy between consenting adults; existence of legislation or judicial precedent which condones or justifies violence against LGBT persons; discriminatory attitudes of judges and other officials within the justice system; and high risk of victims having their credibility questioned or their allegations disbelieved; among others.
461. With respect to intersex persons, the IACHR takes notes of a statement by the UN High Commissioner for Human Rights indicating that “violations [of the rights of intersex persons] are rarely discussed and even more rarely investigated or prosecuted. The result is impunity for the perpetrators; lack of remedy for victims;

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<sup>1298</sup> IACHR, Report: *Access to Justice for Women Victims of Sexual Violence: Education and Health*, 2011, para. 22; IACHR, Report No. 5/96, Case 10.970, Merits, *Raquel Martín de Mejía*, Peru, March 1, 1996, p. 22.

<sup>1299</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Asociación por los Derechos Civiles” (ADC) (Argentina), received by IACHR Executive Secretariat on 20 December 2013; Observatorio de Género en la Justicia de la Ciudad Autónoma de Buenos Aires, *Informe de actividades 2013*, p. 7.

<sup>1300</sup> IACHR, *Truth, Justice and Reparation: Colombia*, 2013.

<sup>1301</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by MOVILH, Chile, dated November 20, 2013, p. 6.

and a perpetuating cycle of ignorance and abuse.”<sup>1302</sup> Also in 2015 the Commissioner for Human Rights of the Council of Europe made reference to the International Intersex Forum’s Public Statement, which called for “adequate redress, reparation, access to justice and the right to truth.”<sup>1303</sup> To this end, the Commissioner for Human Rights has recommended that “national human rights structures such as ombudspersons, equality bodies, human rights commissions and children’s ombudspersons should be active in their outreach towards intersex people, including children. They should be clearly mandated to work on issues related to intersex people and to provide victim-support services to them. There is a need to facilitate intersex persons’ access to justice.”<sup>1304</sup> Further, the statutes of limitations in many countries prevent intersex persons to access justice as they grow up and gain awareness of the harmful practices they were subjected to as children.<sup>1305</sup> Additionally, intersex persons in the Americas often experience difficulties in accessing their own medical records. This unavailability of medical records is another factor that hinders intersex persons’ access to judicial remedies.<sup>1306</sup>

### a. Inadequate treatment when reporting crimes

462. Various civil society organizations<sup>1307</sup> and States<sup>1308</sup> from across the region indicate that LGBT persons avoid reporting crimes out of fear of further

<sup>1302</sup> *Opening remarks by Zeid Ra'ad Al Hussein*, United Nations High Commissioner for Human Rights at the Expert meeting on ending human rights violations against intersex persons, September 16, 2015, Geneva.

<sup>1303</sup> Council of Europe, Commissioner for Human Rights, Issue Paper: *Human Rights and Intersex People*. Silvan Agius, May 12, 2019, p. 51.

<sup>1304</sup> Council of Europe, Commissioner for Human Rights, Issue Paper: *Human Rights and Intersex People*. Silvan Agius, May 12, 2019, p. 9.

<sup>1305</sup> Information received by the IACHR during an expert meeting on the rights of intersex persons convened by the OHCHR. Geneva, September 16-17, 2015.

<sup>1306</sup> Council of Europe, Commissioner for Human Rights, Issue Paper: *Human Rights and Intersex People*. Silvan Agius, May 12, 2019, p. 51.

<sup>1307</sup> [Belize] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “United Belize Advocacy Movement (UNIBAM),” received by the IACHR Executive Secretariat on November 7, 2013; [Brazil] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Casarão do Brasil,” received by the IACHR Executive Secretariat on November 25, 2013; [Colombia] Colombia Diversa, “*Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*,” June 2014, p. 17; [Dominican Republic] Centro de Orientación e Investigación Integral (COIN) - Caribbean Vulnerable Communities Coalition (CVC), *Caribbean Vulnerabilised Groups Project: Diversity and Commonality - a look at Female and Transgender sex workers in three Caribbean Countries*, May 2012, p. 53; [El Salvador] UNDP & Ombudsperson, “*Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador*,” 2013, p. 31; [Guatemala] Organización de Apoyo a una Sexualidad Integral Frente al SIDA (OASIS), “*Crímenes de Odio en Guatemala: una Aproximación a los Retos y Desafíos para el Desarrollo de una Investigación sobre Crímenes en el País en contra de Gay, Bisexuales y Trans*,” April 2010, p. 41; [Guyana] SASOD, *Collateral Damage: The Impact of Laws Affecting LGBT Persons in Guyana*, March 2012, pp. 16-17; [Jamaica] J-FLAG, *Homophobia and Violence in Jamaica*, December 2013, p. 2; [Peru] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by PROMSEX, received by the IACHR Executive Secretariat on December 20, 2013, p. 11; [Venezuela] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Diverlex,” received by the IACHR Executive Secretariat on November 24, 2013, p. 7; [United States] TransLatin@ Coalition, *TransVisible: Transgender Latina Immigrants in US Society*, 2013, p. 42; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas

victimization. According to many of these sources, this is especially the case with persons who have not revealed their sexual orientation or their gender identity to their family or community members. Further, trans persons whose documentation does not reflect their gender might be reluctant to report crimes committed against them. In fact, several sources indicate that when LGBT victims do decide to come forward and report acts of violence committed against them, their claims are frequently dismissed at the outset, without their being able to effectively report the crime, and they are often mistreated, verbally abused, harassed, or even physically attacked by police agents or other authorities.<sup>1309</sup> Further reports show that the reliability of testimony that is provided by lesbian, gay, bisexual, trans, and intersex persons is often questioned, and their reports are not taken seriously.<sup>1310</sup> Fear of retaliation or victimization may also affect witnesses, who are thereby deterred from providing valuable information that would assist the investigation of crimes against LGBT persons.<sup>1311</sup>

463. According to the UN High Commissioner for Human Rights, victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality, or reprisals.<sup>1312</sup> The UN Special Rapporteur on Torture has stated that discriminatory attitudes toward LGBT persons “can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal

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submitted by Colectivo Ovejas Negras, received by the IACHR Executive Secretariat on December 20, 2013, p. 4.

<sup>1308</sup> [Bolivia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, received by the IACHR Executive Secretariat on December 23, 2013; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Mexico, received by the IACHR Executive Secretariat on December 4, 2013, p. 8; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013 dated December 2, 2013, received by the IACHR Executive Secretariat on December 2, 2013, p. 4; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, “*Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional*,” March 2012, p. 7.

<sup>1309</sup> [Chile] Movimiento de Integración y Liberación Homosexual (MOVILH). “*XI Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2012*,” 2013, pp. 61-65; [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by *Colectivo Entre Tránsitos et. al.*, received by the IACHR Executive Secretariat on November 25, 2013, p. 14; Colombia Diversa, “*Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011*,” 2013, p. 50; [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, received by the IACHR Executive Secretariat on December 2, 2013, p. 13; Fundación Ecuatoriana Equidad, “*Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador)*,” 2013, p. 68; [Guyana] Carrico, Christopher, *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 17.

<sup>1310</sup> [Argentina] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Asociación por los Derechos Civiles (ADC)” Argentina, received by the IACHR Executive Secretariat on December 20, 2013; [Barbados] Caribbean HIV & AIDS Alliance, *Assessing the Feasibility and Acceptability of Implementing the ‘Empowerment Project’: An Evidence-Based HIV Prevention Intervention for Gay Men in Barbados*, 2010, p. 30; [Regional] United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners*, 2009, p. 104.

<sup>1311</sup> OASIS (Guatemala), “*El Rostro de la Homofobia: los Crímenes de Odio por Identidad Sexual*,” November 16, 2006, pp. 19 – 20.

<sup>1312</sup> OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 25.

standard of protection, including protection against violence carried out by non-State agents.”<sup>1313</sup>

464. States must put in place the safeguards needed to ensure that LGBT persons will not be deterred from reporting crimes because of obstacles attributed to State agents, such as ill or discriminatory treatment. LGBT victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBT victims, because they may fear further victimization following the disclosure of their sexual orientation or gender identity in public. In fact, such disclosure may even put them at great risk of violence in places where prejudice against persons with diverse sexual orientations and gender identities is pervasive.
465. State programs should ensure that victims and witnesses are not subjected to attacks by non-State parties and that the State institutions that investigate and prosecute crimes do not victimize them. Victims, witnesses, and those accompanying them, should always be treated with respect. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints. In the case of trans persons, agents should respect the gender identity of such persons and use their preferred pronouns. If uncertain about how to address a particular victim, State agents should respectfully ask which name, pronouns, and other language the person would prefer. The IACHR has received information on best practices in this regard.<sup>1314</sup> In sum, special efforts must be made to eradicate deeply rooted practices of mistreatment and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime.

## **b. Protection of victims and witnesses in criminal proceedings**

466. The IACHR has previously stated that victims' participation in the various procedural stages of criminal cases, where applicable under domestic legislation, guarantees the right to truth and justice, is part of the complex structure of checks and balances in criminal proceedings, and encourages public oversight of government actions.<sup>1315</sup> During the investigation stage and the judicial proceedings that follow, the victims of human rights violations, or their next of kin, should have meaningful opportunities to participate and be heard, in the clarification of the facts, the setting of punishment for those responsible, and the seeking of fair compensation.<sup>1316</sup>

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<sup>1313</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, July 3, 2001, para. 21.

<sup>1314</sup> For example, in Argentina, the Ministry of Security issued a resolution instructing federal security forces to refer to trans persons according to their gender identity. Ministerio de Seguridad, *Resolución 1181/2011*, 24 November 2011.

<sup>1315</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 67.

<sup>1316</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 45.

467. The IACHR has received reports that fear deters many witnesses and survivors of prejudice-based violence from reporting or coming forward with information that is key to securing arrests.<sup>1317</sup> This is particularly alarming in places where LGBT persons are specifically targeted by gangs or illegal armed groups. A 2012 civil society report on the situation of trans women in the Americas affirmed that even if such cases do reach the trial stage, witnesses are often threatened, and consequently the cases do not advance.<sup>1318</sup> Further, the IACHR has been informed that LGBT persons who have suffered violence at the hands of police or law enforcement, particularly trans women who engage in sex work, are often intimidated and threatened into not reporting abuses.<sup>1319</sup> The IACHR calls on OAS Member States to adopt measures to guarantee the life and personal integrity of those who report killings and other instances of prejudice-based violence, whether against State or non-State agents.

### c. Legal Aid Programs

468. The IACHR views effective legal counsel and representation as being essential to ensure victims' access to justice, especially in the case of persons who are members of groups that have been subjected to historic discrimination and exclusion, including lesbian, gay, bisexual, trans, and intersex persons. The Commission has received reports that lack of access to legal assistance is another obstacle that may dissuade LGBT persons from filing complaints. For example, the IACHR has been informed that in Haiti, lawyers are reluctant to represent LGBT persons "due to their strong religious affiliations or unwillingness to be associated with, or be perceived as allies of, the LGBT community."<sup>1320</sup> Further, it is reported that lawyers who are willing to represent LGBT individuals or those perceived as being LGBT may substantially increase their rates, which acts as a significant additional barrier to legal representation.<sup>1321</sup>

469. The IACHR refers to the discussion in the previous chapter of the link between structural discrimination faced by LGBTI persons, particularly trans women, and poverty. The organization REDLACTRANS found that trans activists who file complaints generally do so without the assistance of a lawyer, in part because the trans organizations that support them do not have the financial means to provide them with legal assistance.<sup>1322</sup> Even in instances in which lawyers are available, such assistance can be ineffective due to lack of sensitivity to, or awareness of,

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<sup>1317</sup> Information presented by LGBT organizations in Colombia (visit by the IACHR Chair, Tracy Robinson, to Colombia in September-October 2014), and Honduras (visit by the IACHR in December 2014).

<sup>1318</sup> Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 22.

<sup>1319</sup> Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012.

<sup>1320</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre et. al, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 7.

<sup>1321</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre et. al, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 7.

<sup>1322</sup> Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 22.

issues faced by trans persons.<sup>1323</sup> Taking this into account, the IACHR is of the view that legal aid programs are crucial to ensure the right of LGBTI persons to have access to justice and due process of law. The IACHR recommends State efforts to establish public legal aid programs that specifically serve LGBTI victims.<sup>1324</sup> The IACHR urges all OAS Member States to strengthen their public legal aid services — including legal advice, assistance, and representation — and ensure that LGBTI victims of crime are afforded access to justice.

#### d. Training for Justice Operators

470. The IACHR has used the concept of “justice operators” to refer to State officials and employees who play a role in the administration of justice system, and who perform functions that are essential to respecting and ensuring the rights to due process and access to justice. The term “justice operators” include judges, prosecutors, and public defenders.<sup>1325</sup> In its Report on Guarantees for the Independence of Justice Operators, the Commission stressed that proper training ensures that justice operators’ decisions effectively and properly satisfy legal requirements.<sup>1326</sup> The Commission also determined that such training should place special emphasis on human rights, so that all public officials involved in prosecuting cases can properly apply the relevant national and international norms, thereby avoiding acts or omissions that may result in a State’s failure to discharge its international human rights responsibilities.<sup>1327</sup>
471. In that Report, the Commission also urged States to prioritize the implementation of specialized training for judges, prosecutors, and public defenders regarding the rights of groups that, due to their characteristics, require specialized treatment.<sup>1328</sup> This is especially important with respect to lesbian, gay, bisexual, trans, and intersex persons. In this regard, the Commission specified that justice operators should receive specialized training to enable them to respect the dignity of members of such groups when they have been victims of human rights violations, give them adequate participation in processes that may involve them, and ensure their full access to justice, so that the acts of violence against them are prevented, investigated, and punished according to the requirements of international law.<sup>1329</sup>
472. The IACHR was informed that in various OAS Member States, training courses on sexual orientation, gender identity, and issues related to sexual diversity, have

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<sup>1323</sup> Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 22.

<sup>1324</sup> The IACHR notes developments in Argentina, where the General Defender’s Office agreed in 2013 to provide legal aid and legal representation to LGBTI persons, in particular trans women victims of police abuse. Information submitted by the Office of the General Defender of the Nation (Commission on Gender Issues) - Ministry of Public Defense (Argentina), received by the IACHR Executive Secretariat on 30 June 2014, p. 4; Resolution DGN 276/2013.

<sup>1325</sup> IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II. Doc. 44, December 5, 2013 (hereinafter, IACHR, *Guarantees for the Independence of Justice Operators*, 2013), para. 15.

<sup>1326</sup> IACHR, *Guarantees for the Independence of Justice Operators*, 2013, para. 128.

<sup>1327</sup> IACHR, *Guarantees for the Independence of Justice Operators*, 2013, para. 145.

<sup>1328</sup> IACHR, *Guarantees for the Independence of Justice Operators*, 2013, para. 145.

<sup>1329</sup> IACHR, *Guarantees for the Independence of Justice Operators*, 2013, para. 145.

been provided to judges and other justice operators, including public prosecutors, public defenders, and other public officials.<sup>1330</sup> The State of Colombia, for example, informed the IACHR that the National Directorate of Prosecution Offices (“Dirección Nacional de Fiscalías”) has implemented the Comprehensive Plan of Action for the Defense of People’s Rights (“Plan integral de acción para la defensa de los derechos de la población”), which includes certain measures with regard to LGBTI people. These measures include the identification and prioritization of LGBTI cases under investigation by the Office of the Procurator General (“Fiscalía General de la Nación”), as has been done in the cases of trans women who were killed in Sincelejo and Maicao.<sup>1331</sup> However, the IACHR has received information demonstrating that in other Mexican states, despite the progress being made in terms of legislation that ensures a certain degree of equality for LGBTI persons, justice operators lack training in sexual diversity matters, thereby hindering governmental efforts to eradicate violence and discrimination.<sup>1332</sup>

473. As stated by the UN Special Rapporteur on the independence of judges and lawyers, prosecutors play an essential role in ensuring full equality with regard to access to justice, and thereby in preventing the recurrence of violence.<sup>1333</sup> In this regard, the IACHR notes that training on sexual and gender diversity should also be conducted for public prosecutors — and members of their teams — given that most of the time the effectiveness of an investigation will depend heavily on the ability and willingness of these particular officials to effectively identify elements which may reveal that a crime was based on prejudice.
474. This training should include a clear explanation of concepts central to sexual orientation, gender identity, and bodily diversity. It should acknowledge and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities. The IACHR has also recommended that States “give those within the criminal justice system information and training on issues around sexuality,

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<sup>1330</sup> [Argentina] Information submitted by the Office of the Defender General (Commission on Gender Issues) - Ministry of Public Defense (Argentina), received by the IACHR Executive Secretariat on June 30, 2014, p. 4; [Colombia] Cited in IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issued by the IACHR in its country report: Colombia*, citing: State of Colombia, *Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report*. Note S-GAIIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, pp. 348-349; [Nicaragua] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by the IACHR Executive Secretariat on December 2, 2013, p. 9; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 received by the IACHR Executive Secretariat on December 20, 2013, p. 2; [Venezuela] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373, received by the IACHR Executive Secretariat on December 26, 2013, p. 4

<sup>1331</sup> IACHR, *Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, Note S-GAIIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, pp. 348-349.

<sup>1332</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Human Rights Defenders of the National Autonomous University of Mexico (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 125.

<sup>1333</sup> *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/20/19, June 7, 2012, para. 54.

gender identity, and HIV/AIDS.”<sup>1334</sup> The IACHR stresses that judges should receive continuous training on sexual and gender diversity issues. Special courses should not only aim to keep judges apprised of new legislative developments, but should also focus on the eradication of prejudice in the justice system against LGBTI persons. It is vital that this training not be limited to judges and that judicial employees at all levels receive appropriate training.

## 2. The Obligation to Investigate, Prosecute and Punish with Due Diligence

### a. Impunity for Violence

475. OAS Member States have the duty to prevent and combat impunity, which has been defined as “an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights”<sup>1335</sup> that are protected by the inter-American human rights instruments. The Inter-American Court has established that if the State apparatus “acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the rights of those subject to its jurisdiction.”<sup>1336</sup> The IACHR has indicated that impunity signals that violence and discrimination are acceptable, which in turn, fosters repetition.<sup>1337</sup>
476. Accordingly, when States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which in turn fuels further violence and leads to mistrust of the victims in the justice system. During the past ten years the IACHR has been consistently receiving information concerning serious deficiencies in the investigation of cases of violence based on prejudice toward non-normative sexual orientations and gender identities. This hinders the possibility of bringing perpetrators to justice. For example, the UN Human Rights Committee has expressed concern over the lack of investigation and the high levels of impunity for acts of violence perpetrated

<sup>1334</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, 2012, para. 305(c).

<sup>1335</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paras. 236-237; *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 203; *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 82; *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 170; *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 148; IACRH, *Statement by the Inter-American Commission on Human Rights on the application and scope of the justice and peace law in Colombia*, OEA/Ser/LV/II.125 Doc. 15, August 1, 2006, para. 50.

<sup>1336</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1.

<sup>1337</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003.

against LGBT persons in various OAS Member States,<sup>1338</sup> and has urged States to ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim be duly investigated, prosecuted, and punished.

477. The Commission notes that accurate statistics on conviction rates in cases of violence against LGBT persons in countries in the region range from limited to non-existent. In many States, as examined earlier in this Report, there is no data collection on violence against LGBTI persons, while in others there is some collection but no centralized unit or division at the national level for aggregating statistical data from the different agencies in the country. Further, in States in which such data collection mechanisms do exist, data produced by different state agencies may be contradictory and incongruent.<sup>1339</sup> Lack of judicial statistics further complicates the analysis of situations of impunity in cases of violence against LGBTI persons. Nevertheless, several States and civil society organizations have compiled enough information to contrast the number of killings with the number of cases in which investigations were opened and sentences have been handed down. For example, the State of Honduras informed the IACHR that the Office of the Attorney General registered at least 122 killings of LGBT persons between 2009 and 2013, out of which only 24% had reached the judicial stage, and in only 4% of which a final decision had been rendered by the courts.<sup>1340</sup> The State of Nicaragua informed the IACHR of a civil society report that indicated that, out of 17 killings registered between 1999 and 2013, only three convictions had been handed down.<sup>1341</sup> Figures reported in the 2013 Annual Report of the Bolivian Office of the Ombudsman show that in a ten-year period, at least 55 killings had been reported, but in only 12 had an investigation been opened, and in none of them had the courts issued a judicial decision.<sup>1342</sup> The State of Uruguay informed the IACHR that as of the close of 2013, civil society had reported at least 5 killings of trans women in 2012, without any of the investigations resulting in the identification of any of the perpetrators.<sup>1343</sup>
478. Civil society organizations also report high levels of impunity. Brazilian organizations affirm that the perpetrators had not been arrested in 67% of

<sup>1338</sup> Human Rights Committee, *Concluding observations: Plurinational State of Bolivia*, CCPR/C/BOL/CO/3, December 6, 2013, para. 7; *Concluding observations: Dominican Republic*, CCPR/C/DOM/CO/5, April 19, 2012, para. 16; *Concluding Observations: Guatemala*, CCPR/C/GTM/CO/3, April 19, 2012, para. 11.

<sup>1339</sup> Colombia Diversa, "Informe de Derechos Humanos 2013-2014", p. 96 and ff., (Available only in Spanish).

<sup>1340</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 4.

<sup>1341</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Nicaragua, received by the IACHR Executive Secretariat on November 20, 2013, p. 10.

<sup>1342</sup> Ombudsperson of the Plurinational State of Bolivia, "El ejercicio de los derechos humanos en el estado plurinacional de Bolivia: Informe 2013," December 2013, p. 54.

<sup>1343</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note O141/2013 dated December 20, 2013, received by the IACHR Executive Secretariat on December 20, 2013, p. 1; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013, p. 8. See also, Committee against Torture, *Concluding observations: Uruguay*, CAT/C/URY/CO/3, June 10, 2014, para. 21.

homicides committed against LGBT persons in 2013.<sup>1344</sup> In 2011 a local organization in Guatemala — which analyzed its own records as well as information gathered from official governmental agencies and media reports — indicated that perpetrators had not been identified in 66% of reported cases of violence against trans women.<sup>1345</sup> Organizations from Peru point out that, in 2011, the Peruvian National Police and the Public Ministry decided to open investigations in only 15% of the cases of killings of gay men and trans women registered that year.<sup>1346</sup> In Guyana, civil society organizations report that no charges had been brought in any of the three killings of LGBT persons registered in 2013.<sup>1347</sup> In December 2014, a Colombian organization informed the IACHR that the investigations in the cases of the 2008 and 2009 killings of human rights defenders Fredys Darío Pineda, Álvaro Miguel Rivera, and Wanda Fox, had stalled.<sup>1348</sup>

479. The IACHR notes that there is a tremendous difference between the number of cases in which investigations were opened with the number of those in which a final decision was handed down. The results that have been brought to the attention of the Commission speak of alarming levels of impunity. The IACHR will next examine more closely what are some of the factors that are related to these high levels of impunity.

## **b. Deficiencies in Investigation and Prosecution**

### **i. Prejudice in the conduct of investigations, and lack of a differentiated approach**

480. In 2000, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that “acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims. Measures should include policies and programs geared towards overcoming hatred and prejudice against [gay persons] and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.”<sup>1349</sup>
481. The IACHR welcomes measures adopted in recent years by countries in the Americas to effectively investigate crimes committed against LGBT persons. For example, the IACHR notes that some OAS Member States have either established specialized prosecutorial units or appointed a dedicated prosecutor to investigate

<sup>1344</sup> Grupo Gay da Bahia (GGB), “*Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014*,” p. 2 (Available only in Portuguese).

<sup>1345</sup> Organización Trans Reinas de la Noche (Guatemala), “*Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011*,” May 1, 2011, p. 38 (Available only in Spanish).

<sup>1346</sup> PROMSEX, *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2011, 2012*, p. 55.

<sup>1347</sup> Society Against Sexual Orientation Discrimination (SASOD) & Sexual Rights Initiative (SRI), *On Devil’s Island: A UPR Submission on LGBT Human Rights in Guyana*, June 2014, para. 8.

<sup>1348</sup> Information submitted to the IACHR by “Colombia Diversa,” received by the IACHR Executive Secretariat on December 11, 2014.

<sup>1349</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2000/3, January 25, 2000, para. 116.

crimes committed against LGBT persons. These countries include Brazil (states of Paraná, Espírito Santo, and Pernambuco),<sup>1350</sup> Colombia, Mexico<sup>1351</sup> (for example, Mexico City<sup>1352</sup> and Oaxaca), Honduras,<sup>1353</sup> and Nicaragua.<sup>1354</sup> Some of these specialized units are also responsible for guaranteeing the rights of LGBT persons in their jurisdictions, fostering educational programs, and promoting the formulation of public policies.<sup>1355</sup> Other administrative entities focused on issues of interest for LGBT persons may also contribute to the work of the judiciary or prosecution offices. For example in Honduras, the National Commissioner for Human Rights has a network of offices throughout the country that receive reports of crimes against LGBT persons, and has the competence to refer such cases to the Public Ministry for prosecution.<sup>1356</sup>

482. In 2014, the IACHR welcomed the launching of a protocol by the Supreme Court of Mexico that aids judges in deciding cases involving the rights of LGBTI persons.<sup>1357</sup> Although not binding, this instrument offers key principles to guide the adjudication of cases involving sexual orientation, gender identity, and bodily diversity. The Protocol identifies common stereotypes and misconceptions about LGBTI persons that hinder their right to access to justice without discrimination, especially in relation to their right to the recognition of gender identity, family life and relationships, work and employment, health and education, freedom of expression and association, the right to liberty, and to be free from violence. In this

<sup>1350</sup> IACHR, Press Release 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1351</sup> IACHR, Press Release 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1352</sup> This unit known as ‘Specialized Research Unit for the Attention of users of the Gay, Lesbian, Bisexual, Transvestite, Transgender, Transexual and Intersex (LGBTTTI)Community’. See: Attorney General of the Federal District, “Acuerdo 23/2010 del C. Procurador General de Justicia del Distrito Federal por el que se crea la Unidad Especializada para la atención de usuarios de la Comunidad LGBTTTI (MP LGBTTTI),” November 23, 2010; Attorney General of the Federal District, *Segundo Informe de Gobierno*, 2014, p. 21.

<sup>1353</sup> IACHR, Press Release 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

According to the information provided by the State of Honduras, the “Special Unit for Killings with Social Impact” also deals with cases regarding aliens and journalists. See: Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Red Lésbica Cattrachas” (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 2.

<sup>1354</sup> According to the Nicaraguan State, the person who occupies the position of Special Procurator for Sexual Diversity was elected by consensus among Nicaraguan LGBTI organizations. See: Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by the IACHR Executive Secretariat on November 20, 2013, p. 7; Committee on the Rights of the Child, *Concluding observations: Nicaragua*, CRC/C/NIC/CO/4, October 20, 2010, para. 36; *Report of the Working Group on the Universal Periodic Review: Nicaragua*, A/HRC/14/3, March 17, 2010, para. 27; Inter Press Service (IPS), “*An Ombudswoman for Sexual Diversity*” December 15, 2009.

<sup>1355</sup> IACHR, Press Release 60/14, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, May 20, 2014.

<sup>1356</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11.

<sup>1357</sup> IACHR, Press Release 95/14, IACHR Congratulates Mexican Supreme Court for Adoption of Protocol Involving Sexual Orientation and Gender Identity, August 29, 2014; See also, Supreme Court of Justice of Mexico, “*Protocolo de actuación para quienes imparten justicia en casos que involucren la orientación sexual o la identidad de género*,” August, 2014 (Available only in Spanish).

regard, the Protocol calls on judges to question the neutrality of the law when it is applied to cases involving persons who are disadvantaged on account of their sexual orientation or gender identity, and to evaluate evidence without using stereotypes regarding sexual orientation or gender identity.

483. The IACHR has received copious information regarding prejudice and bias in investigations of crimes against LGBT persons, both from States<sup>1358</sup> and civil society organizations.<sup>1359</sup> The IACHR has expressed concern over the tendency of state agents in the justice systems of countries in the Americas to make biased assumptions, from the very beginning of an investigation, with regard to the motives, possible suspects, and circumstances of crimes, based on the victims' perceived or actual sexual orientation or gender identity.<sup>1360</sup> The usual consequence of these biased assumptions is that — instead of thoroughly collecting evidence and conducting serious and impartial investigations — police officers and other justice system agents direct their actions toward finding evidence that confirms their prejudiced theory of events, which in turn frustrates the purpose of the investigation and may lead to the invalidation of the proceedings.
484. Problems with the investigations of crimes against LGBT persons involve, in part, failure to investigate whether or not the crime was committed by reason of the victim's gender identity or sexual orientation. Hence, in most cases, the victim's sexual orientation or gender identity is completely disregarded in the investigation, despite its potential usefulness in identifying possible motives or suspects.<sup>1361</sup> In other instances, such discriminatory assumptions or prejudice may

<sup>1358</sup> See, for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by the IACHR Executive Secretariat on December 4, 2013, p. 8. See also, Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres (CONAVIM) (Mexico), “*Estudio nacional sobre las fuentes, orígenes y factores que producen y reproducen la violencia contra las mujeres,*” 2012, p. 434.

<sup>1359</sup> [Bolivia] Red de Travestis, Transexuales y Transgénero de Bolivia (Red TREBOL) & Heartland Alliance for Human Needs & Human Rights, *La situación de los derechos humanos de las personas lesbianas, gay, bisexuales, transgénero en Bolivia*, March 2013, p. 6; [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colombia Diversa,” received by the IACHR Executive Secretariat on November 26, 2013; Caribe Afirmativo - Global Rights, “*Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno,*” Octubre de 2014, p. 14; [Honduras] Cattrachas et. al., written submission presented in the context of a public hearing before the Commission. IACHR, Public Hearing “Homicides of [LGBT] Persons and Impunity in the Americas,” 146th Period of Sessions, November 1, 2012; [Jamaica] Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG) et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*. October 2011, p. 8; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México” (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 114.

<sup>1360</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 337. The IACHR has been informed of these biased investigations in several public hearings held since 2011. The IACHR has made reference to this issue in several press releases in recent years. See, among others, IACHR, Press Release 79/13, *IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGBTI Persons*, October 24, 2013.

<sup>1361</sup> See, for example, Cattrachas et. al., written submission presented in the context of a public hearing before the Commission. IACHR, Public Hearing *Homicides of [LGBT] Persons and Impunity in the Americas* 146th Period of Sessions, November 1, 2012.

also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all.<sup>1362</sup>

485. The IACHR has received information establishing that, due to prejudice in the justice systems in countries in the region, killings of lesbian, gay, and bisexual persons are not categorized as often as they should be as hate crimes or crimes motivated by prejudice. Instead they are characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. When crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim (i.e., the prejudice may result in the crime being excused or less grave on the basis of the actions or conduct of the victim). This shift renders invisible the power structures that reproduce the homophobic stereotypes that underpin the prejudice.<sup>1363</sup>
486. According to the trans activist organization Redlactrans, authorities in the countries of the region do not have a comprehensive framework for conducting investigations into killings of trans women. Rather, their collective approach seems to be limited to reproducing prejudices. For example, it is reported that a police representative in Central America affirmed that “there are three motives why [trans women] are killed: one, for standing on the corner [implying sex work]; two because they steal from a client; and three, because they belong to criminal groups. Oh! And they also kill each other.”<sup>1364</sup>
487. These biases and prejudices that are present in the handling of these cases render the investigations ineffective. This ineffectiveness of the justice system fosters high rates of impunity, which in turn lead to the chronic repetition of such crimes, leaving the victims and their families in a state of absolute defenselessness.<sup>1365</sup> All of these circumstances play a major role in the obstruction of justice, and perpetuate barriers to adequate prosecution of, and reparations for, crimes against persons with non-normative sexual orientations and gender identities.
488. Violence that takes place in the context of an intimate relationship can also be based on prejudice, whether the relationship is same-sex or different-sex. When someone who is lesbian, gay, bisexual, or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims, regardless of whether there is indicia to indicate that the victim had an intimate relationship with the alleged perpetrator.
489. As examined in the second chapter of this Report, not all acts of violence against LGBT persons can be characterized as violence based on prejudice. The IACHR

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<sup>1362</sup> Meeting of Experts on Violence and Access to Justice, February 24-25, 2012. See, related, IACHR, Press Release No. 23/12, *IACHR Holds Meeting on Violence and Impunity against LGTBI Persons*, March 1, 2012.

<sup>1363</sup> Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, p. 176. Translation by the IACHR.

<sup>1364</sup> Redlactrans, *The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 21. Translation by the IACHR.

<sup>1365</sup> IACHR, Press Release No. 51/12, *IACHR urges States to End Homophobia and Transphobia*, May 17, 2012.

notes the difficulties in determining whether or not such violence is based on prejudice. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out with due diligence. Notwithstanding the fact that not all acts of violence against LGBT persons are motivated by prejudice, remedying existing levels of impunity and the prevalence of crimes of violence against LGBT persons requires that such crimes receive full and unbiased investigation.

**ii. Acquittal or mitigated sentencing due to the sexual orientation or gender identity of the victim**

490. The IACHR is highly concerned about information it has received regarding judicial decisions that accept legal defenses justifying murder or other acts of violence. The Commission has been informed that courts in the region have partially or fully excused crimes such as murder or assault against LGBT persons, because the attacks in question were supposedly committed in response to same-sex sexual advances, or because of the gender identity of the victim. In these cases, the courts effectively blame the sexual orientation or gender identity of the victim for the accused's acts of violence.
491. In the United States, for example, defendants accused of murdering LGBT persons have attempted to justify the killing by arguing that the violence was prompted by alleged sexual advances made by the victim (commonly referred to as "gay panic defense"),<sup>1366</sup> or by the realization that the person with whom the perpetrator was having or had had a sexual encounter or relationship was trans (commonly referred to as "trans panic defense");<sup>1367</sup> which have in some cases resulted in a mitigated sentence.<sup>1368</sup> According to the American Bar Association (ABA), the "gay panic" and "trans panic" defenses have been used by defendants facing trial in U.S. courts as a reason to "claim insanity or diminished capacity," "to bolster a defense of provocation," or "to strengthen their case for self-defense."<sup>1369</sup>
492. In August 2013, the ABA House of Delegates passed a resolution urging "federal, state, local and territorial governments to take legislative action to curtail the availability and effectiveness of the 'gay panic' and 'trans panic' defenses." According to the ABA, this legislative action should include: (a) requiring courts, upon request of a party, to instruct the jury not to let bias or prejudice influence its decision about the victims or defendants based upon sexual orientation or gender identity; and (b) specifying that neither a non-violent sexual advance nor the

<sup>1366</sup> These cases include the killings of 21-year-old Matthew Shepard, 15-year-old Lawrence King, and Marcus McMillian. See Lee, Cynthia, *The Gay Panic Defense in University of California Davis Law Review*, Vol. 42, p. 285-88. See also, The Advocate, *Gay Panic' Defense Trotted Out In Murder of Mayoral Candidate*, March 11, 2013. See also, CBS News, *California teen Brandon McInerney sentenced to 21 years for point-blank murder of gay classmate*, December 19, 2011.

<sup>1367</sup> These cases include the killings of 17-year-old Gwen Araujo, in California, and Jorge Steven López Mercado, in Puerto Rico. GLAAD, *Gwen Araujo Murdered Ten Years Ago Today*, October 13, 2012; Pink News, *Suspect in Puerto Rico teen's murder 'may use gay panic defense'*, November 20, 2009.

<sup>1368</sup> See for example, case of killing of Lawrence King. CBS News, , *California teen Brandon McInerney sentenced to 21 years for point-blank murder of gay classmate*, December 19, 2011. See, related, the killing in the case of Gwen Araujo. *Gwen Araujo Murdered Ten Years Ago Today*, October 3, 2012.

<sup>1369</sup> American Bar Association, *Resolution 113A*, adopted by the House of Delegates, August 12-13, 2013.

discovery or someone's sex or gender identity constitutes legally adequate provocation to mitigate the crime.<sup>1370</sup> In this regard, the Inter-American Commission welcomes the State of California's groundbreaking bill passed in September 2014, reported to be the first bill to ban the use of "gay panic" and "trans panic" defenses in U.S. courts.<sup>1371</sup>

493. The IACHR has received a report about the mitigation of a sentence in the case of a killing of a gay man in Colombia, based on a defense of sudden "rage and intense pain" (*atenuante de ira e intenso dolor*).<sup>1372</sup> On a different but related topic, the Commission was informed of a ruling issued by an appellate court in Argentina in 2015, which considered the purported sexual orientation of a 6-year-old male sexual abuse victim, to be extenuating circumstances that justified a lesser sentence for his abuser than would otherwise be proportionate to the crime. On that occasion, the IACHR emphasized that "a person's sexual orientation or gender identity or expression should not be considered relevant to extenuate or justify the seriousness of criminal conduct committed against that person."<sup>1373</sup>
494. Further, the IACHR has been informed that several courts in the Commonwealth countries of the Caribbean have accepted a "same-sex sexual advance defense" either as a partial defense resulting in a conviction for a lesser offense, for example, reducing a crime from murder to manslaughter, or as a full defense leading to acquittal, for example, cases in which homicide was deemed "justified."<sup>1374</sup> The IACHR has received reports of cases of violence against LGBT persons in which such defenses led to mitigation or acquittal in Barbados,<sup>1375</sup> Dominica,<sup>1376</sup> Jamaica,<sup>1377</sup> The Bahamas,<sup>1378</sup> and Trinidad and Tobago.<sup>1379</sup> In one of the cases in The Bahamas, the judge affirmed, "one is entitled to use whatever force is

<sup>1370</sup> American Bar Association, *Resolution 113A*, adopted by the House of Delegates, August 12-13, 2013.

<sup>1371</sup> The Advocate, *California becomes First State to Ban Gay, Trans "Panic" Defenses*, September 29, 2014.

<sup>1372</sup> Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice's Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, p. 170. Making reference to the decision in the case of the killing of a person with the initials J.W.A.G (defendants Luis Fernando Combat Paternina and Carlos Humberto Castaño Bedoya), Juzgado Cuarto Penal del Circuito de Dosquebradas, Risaralda Proceso 2002-00135, 7 June 2004.

<sup>1373</sup> IACHR, Press Release No. 59/15, *IACHR Evokes Inter-American Standards in Reaction to a Court Ruling in Argentina*, June 3, 2015.

<sup>1374</sup> Regional Meeting of LGBTI Activists from CARICOM, *The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries*, 2010, submitted to the IACHR in November 2010, p. 30. See also Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013.

<sup>1375</sup> Harewood v The Queen BB 2009 CA 22 (December 21, 2009) (CA, Barbados).

<sup>1376</sup> Dominica News Online, *Men facing serious charges walk free*, September 25, 2012; Case of Clem Philbert v the State, (Dominica) cited in Amnesty International, *Dominica: Failure to address key human rights concerns overshadows minor progress*, Submission to the UN Universal Periodic Review, May 2014, p. 3. Philbert v The State (April 30, 2012) (Eastern Caribbean CA, Dominica).

<sup>1377</sup> See also, R v Bartley (1969) 14 WIR 407 (CA, Jamaica) 411.

<sup>1378</sup> Penal Code of The Bahamas, Art. 107(4)(j). For the prevention of, or for the defense of himself or any other person against any of the following crimes, a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing, namely: [...] forcible unnatural crime. Pink News, *Nassau man freed after using gay panic defence at murder trial*, February 2, 2009.

<sup>1379</sup> Marcano v The State Cr. App. No. 2 of 2002 (July 26, 2002) (CA, Trinidad and Tobago).

necessary to prevent one's self being the victim of a homosexual act,"<sup>1380</sup> making reference to a non-violent sexual advance and not to a sexual assault.

495. In these countries, a finding of justifiable homicide is a full defense to murder that leads to acquittal, and justifiable homicide includes a homicide committed to prevent "a forcible and atrocious crime," which includes a non-violent same-sex sexual advance.<sup>1381</sup> Mitigation of a crime is the result of the judge or jury accepting a partial defense to murder, finding that the defendant lost his or her self-control as a result of provocation by the victim's actions or words.<sup>1382</sup> According to a recent study of these cases in the Commonwealth Caribbean, the defense of provocation has been raised in homicide cases "where (1) the defendant killed his female partner after discovering that she was involved in a sexual relationship with another woman [Trinidad and Tobago, 2008], (2) the defendant killed the deceased and argued that the killing was a response to a 'homosexual advance' by the deceased [Trinidad and Tobago, 2002], and (3) the defendant and the deceased were in a same-sex relationship which ended in the defendant's killing of his partner [Barbados, 2009]."<sup>1383</sup>
496. The aforementioned study calls for the "abolition of the defence of justifiable homicide and for reform of the defence of provocation to exclude the availability of the defence of provocation where the homicide occurred in response to a non-violent sexual advance."<sup>1384</sup> The study recommends the inclusion of sexual orientation as a prohibited ground of discrimination in judicial codes and in guidelines for judicial conduct, given that such codes derive from a judicial responsibility to observe standards of equality and fairness.<sup>1385</sup>
497. The Commission notes that the acceptance of these defenses that are based on the sexual orientation or gender of the victim contributes to the reinforcing of harmful stereotypes against LGBT persons. These defenses also serve to shift the blame from the perpetrator to the victim. The IACHR urges OAS Member States to undertake the necessary legal and public policy changes to expressly establish that the sexual orientation, gender identity or gender expression of victims can never be used to establish a partial or full justification of crimes committed against them.

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<sup>1380</sup> Commonwealth of The Bahamas in The Court of Appeal, *The Attorney General v. Latherio Jones*, SCCrApp & CAIS No. 89 of 2009, p. 3.

<sup>1381</sup> Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 18.

<sup>1382</sup> Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 19.

<sup>1383</sup> Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 20 (footnotes omitted).

<sup>1384</sup> Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013.

<sup>1385</sup> Se-shauna Wheatle, *Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean*, Faculty of Law University of West Indies Rights Advocacy Project, 2013.

### c. The Due Diligence Standard

498. The Commission urges States to take all necessary measures to apply due diligence in preventing, investigating, and sanctioning violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, which includes education and health facilities.<sup>1386</sup> Regarding the investigation of crimes against LGBT persons or those perceived as such, the Commission has also urged States to investigate the possibility that the violent acts were committed because of the victim's sexual orientation, gender identity, and/or gender expression.<sup>1387</sup>
499. The Commission and the Inter-American Court have affirmed that States have the obligation to investigate human rights violations in order to ensure the enjoyment of the rights established in the American Declaration and the American Convention.<sup>1388</sup> The obligation to investigate is an obligation of *means* rather than *results*. Nevertheless, States must take seriously the obligation to investigate and “must not treat it as a mere formality, preordained to be ineffective.”<sup>1389</sup> In this regard, in pursuing or considering whether to pursue investigative procedures, the State must not rely solely on the initiative of the victims or their next of kin, or on their offer of proof.<sup>1390</sup> In light of this obligation, once State authorities are aware of a killing, for example, they should initiate *ex officio* (on their own accord) and without delay, a serious, impartial, thorough, and effective investigation, in accordance with international standards in this field.<sup>1391</sup> This investigation must be carried out using all available legal means, with the aim of discovering the truth<sup>1392</sup> and prosecuting, bringing to trial, and punishing all the perpetrators of

<sup>1386</sup> IACHR, Press Release No. 60/13, *IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas*, August 15, 2013.

<sup>1387</sup> IACHR, *Annual Report 2012* (Chapter IV, Cuba, LGBTI), para. 136.

<sup>1388</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 191; *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 166 and 176; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 98, and *Case of Garibaldi v. Brazil*. Preliminary objections, Merits, Reparations, and Costs. Judgment of September 3, 2009. Series C No. 203, para. 112

<sup>1389</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>1390</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 191; *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, paras. 192 and 233, and *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 192.

<sup>1391</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 191. *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195., para. 298, and *Case of González et al., (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 290. IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 133.

<sup>1392</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 191.

the acts. The obligation to carry out an effective, independent investigation is especially important when State agents are, or could be, involved, given the potential for the State's direct culpability in such cases and the risk that State agents may protect other State agents from facing justice.<sup>1393</sup> That said, the Court has noted that States are equally under this obligation when third parties commit human rights violations, "because, if their acts are not investigated genuinely, they would, to some extent, be assisted by the public authorities, and this would entail the State's international responsibility."<sup>1394</sup>

500. The Court has also affirmed that if the State fails to comply with its obligation of due diligence in a criminal investigation, this "may lead to the absence of sufficient evidence to clarify the events that are being investigated, to identify the possible perpetrators and participants, and to determine the eventual criminal responsibilities [under national law]."<sup>1395</sup> In developing the concept of due diligence, the Inter-American Court has defined the guiding principles that must be observed in criminal investigations of human rights violations, and these include, *inter alia*: recovering and preserving probative material; identifying possible witnesses; obtaining witness statements; and determining the nature, cause, place, and time of the act that is under investigation. In addition, competent professionals, using the most appropriate procedures, should thoroughly examine the scene of the crime and perform rigorous forensic tests.<sup>1396</sup> Further, the Inter-American Court has clearly outlined the State's obligation to investigate with due diligence killings of, and acts of sexual violence against women,<sup>1397</sup> taking into account the causes and consequences of gender-based violence.
501. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity are investigated, and that the

<sup>1393</sup> I/A Court H.R., *Case of Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, para. 176; *Case of the Pueblo Bello Massacre v. Colombia*. Merits, reparations and costs. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations*. Judgment of May 26, 2010. Series C No. 213, para. 117.

<sup>1394</sup> I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 1, para. 177; *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 3, 2012. Series C No. 248, para. 188; *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 206; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 167.

<sup>1395</sup> I/A Court H. R., *Case of Osorio Rivera and Family v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 144.

<sup>1396</sup> I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 128; *Case of Garibaldi v. Brazil*. Preliminary objections, Merits, Reparations, and Costs. Judgment of September 3, 2009. Series C No. 203, para. 115, and *Case of González et al., ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 300.

<sup>1397</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, paraa. 193-194. I/A Court H.R., *Case of González et al., ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 283, 300-301.

perpetrators are brought to justice.<sup>1398</sup> To this end, States should strengthen their national institutions with a view to: preventing and investigating acts of violence and human rights violations against LGBT persons; ensuring judicial protection for victims; and bringing perpetrators to justice.<sup>1399</sup>

502. The IACHR has been informed that in many countries in the region where there is legislation that increases penalties for crimes committed on the basis of the sexual orientation or gender identity of the victim, the legislation is hardly ever applied to specific cases, and hate crimes are more often addressed as common crimes, disregarding the prejudice with which they were committed.<sup>1400</sup> In this regard, the IACHR has been informed of the difficulties in prosecuting hate crimes in the United States.<sup>1401</sup> Concerning Colombia, an NGO informed the IACHR that in all of the 730 cases of killings of LGBT persons documented between 2006 and 2014, no court had ever made a finding of aggravating circumstances, that would lead to an increased penalty, based on the crime having been motivated by prejudice.<sup>1402</sup> In Chile, organizations have indicated to the Commission that the wording of the “motive” provisions in hate crimes legislation, which require that the crime be motivated by hate or prejudice, create an element of the crime that is too subjective and very difficult to prove. It has been argued that in these jurisdictions, the wording of these provisions makes it extremely challenging for hate crimes legislation to be effectively applied.<sup>1403</sup>
503. The IACHR recognizes that the subjective element of motivation may be difficult to establish in many cases. It may not be easy to establish with certainty whether a crime was the result of prejudice on the part of the perpetrator, particularly in the

<sup>1398</sup> OAS, AG/RES. 2863 (XLIV-O/14), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 5, 2014, res. para. 3; OAS, AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 6, 2013, res. para. 3; OAS, AG/RES. 2721 (XLII-O/12), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the second plenary session, held on June 4, 2012, res. para. 3; OAS, AG/RES. 2653 (XLI-O/11), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 7, 2011, res. para. 2; OAS, AG/RES. 2600 (XL-O/10), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 8, 2010, res. para. 2; OAS, AG/RES. 2504 (XXXIX-O/09), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 4, 2009, res. para. 2. All the resolutions are available in the section “links” of the LGBTI Rapporteurship’s web, accessible through the IACHR page: [www.iachr.org](http://www.iachr.org).

<sup>1399</sup> OAS, AG/RES. 2807 (XLIII-O/13), *Human Rights, Sexual Orientation, and Gender Identity and Expression*, adopted at the fourth plenary session, held on June 6, 2013.

<sup>1400</sup> [Colombia] Colombia Diversa, “*Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia*,” 2010-2011, p. 31. [Honduras] Cattrachas et. al., “*Audiencia de Homicidios de Personas LGTTBI e Impunidad en las Américas ante la CIDH*,” November 1, 2012, p. 27. [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Human Rights Defenders of the National Autonomous University of Mexico (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 64; Notiese, “*A pesar de reformas constitucionales, aún restan pendientes para comunidad LGTTTI*,” August 16, 2011 (Available only in Spanish).

<sup>1401</sup> See, e.g., Huffington Post, *Gay Hate Crime Acquittal In Kentucky Throws Fuel On Hate Crime Debate*, October 26, 2012. CBS News, *Two Kentucky men acquitted in landmark gay hate crime case*, October 24, 2014.

<sup>1402</sup> Information submitted to the IACHR by “Colombia Diversa,” received by the IACHR Executive Secretariat on December 11, 2014.

<sup>1403</sup> Response to the IACHR questionnaire provided by ‘*Movimiento de Liberación e Integración Homosexual – ‘MOVILH)’* (Chile) dated November 20, 2013, p. 15; Response to the IACHR questionnaire provided by ‘*Fundación Iguales*’ (Chile), received on January 29, 2014, p. 6.

absence of a confession of a prejudice-based motive. However, certain other evidence or the presence of certain circumstances may be valuable indicia of the existence of such motivation. In the United States, for example, the FBI has issued a set of guidelines for the investigation of bias-based crimes. The FBI indicates that while no single fact is likely to be conclusive, certain elements, particularly when found in combination, are supportive of a finding of bias.<sup>1404</sup> The FBI warns that these elements “are not all-inclusive of the types of objective facts which evidence bias motivation,” and emphasizes the need to conduct case-by-case assessment of the facts to determine bias motivation.<sup>1405</sup> Civil society organizations, such as Colombia Diversa, have attempted to establish criteria for distinguishing crimes committed based on the perceived or actual sexual orientation or gender identity of the victim, from crimes committed with other motivations.<sup>1406</sup> These criteria include factors relevant to the alleged perpetrator (if known), the alleged motive, the level of brutality exerted, and the place where the violence occurred.<sup>1407</sup> The

<sup>1404</sup> The following elements were included, which make reference not only to sexual orientation and gender identity, but also to race and ethnicity, among other factors: (1) the offender and victim being of a different sexual orientation and/or gender identity; (2) bias-related comments aimed at the victim; (3) bias-related drawings, markings of symbols left at the scene or objects used by the perpetrators; (4) elements related to the neighborhood where the crime took place (either because the victim is a member of a group overwhelmingly outnumbered by other residents; the crime took place in a neighborhood where previous hate crimes took place; several incidents occurred in the same locality at or about the same time and all the victims were of the same sexual orientation or gender identity); (5) a substantial portion of the community where the crime occurred perceive it as motivated by bias; (6) the victim was an activist or defender or participated in activism to defend or promote the rights of LGBT persons, even if the victim was not a member of the targeted group; (7) the incident coincided with a day of significance to the LGBT community; (8) the perpetrator was previously involved in a similar bias motivated crime or there is indication that a hate group was involved; and (9) a historically-established animosity based on bias existed between the victim and the offender. CIJS Division, UCR Program, *Hate Crime Data Collection Guidelines and Training Manual*, February 27, 2015, pp. 6-7.

<sup>1405</sup> CIJS Division, UCR Program, *Hate Crime Data Collection Guidelines and Training Manual*, February 27, 2015, p. 7.

<sup>1406</sup> However, as one civil society organization indicated, given the historical discrimination to which this group has been subjected, prejudice is likely to be the motive for the majority of such crimes. Lleras, Catalina, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa, “*Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*,” Bogotá, 2013, p. 17.

<sup>1407</sup> In the case of lesbian women, the criteria included: (i) the acts occurred in places where [gay and lesbian persons] socialize; (ii) they were killed with their partner; (iii) the victims were human rights defenders; (iv) they had received discriminatory threats from, or statements by, the perpetrator; and, (v) the alleged perpetrators were members of illegal organizations. In the case of gay men, the criteria included: (i) they were assassinated as a couple; (ii) the incidents occurred in places where gay men socialize; (iii) the incidents took place at the victims’ residence; (iv) the excessive nature of the violence used to kill them; (v) the purported participation of homophobic groups; (vi) the purported participation of paramilitary groups; and (vii) the type of weapon used. In the case of trans women, the factors that determined the classification of these as homicides due to prejudice were: (i) the occurrence of the incidents in places where [gay and lesbian persons] socialize or in places where sex workers are known to meet clients; (ii) the excessive violence with which the homicides were committed; (iii) the existence of reports on risk in the Early Warning System (Sistema de Alertas Tempranas) of the Office of the Human Rights Ombudsman that warned of the risk to these persons in light of earlier threats; (iv) the alleged responsibility of trans-phobic groups; (v) the alleged responsibility of illegal armed groups; and (vi) the status of the victims as human rights defenders or LGTBI activists. Lleras, Catalina, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa, “*Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*,” Bogotá, 2013, p. 19, cited in IACHR, *Truth, Justice and Reparation: Colombia*, 2013, paras. 995-996.

failure to apply due diligence in the investigation is often the reason these factors are not investigated.

504. The IACHR calls on OAS Member States to effectively and impartially investigate all crimes committed against LGBTI persons, and to develop guidelines or protocols that include indicia or elements that would assist police officers, prosecutors, and other investigators in determining whether a particular crime was committed based on prejudice against the victim's actual or perceived sexual orientation and/or gender identity. In this regard, the IACHR considers that the following elements, among others, *may* be indicative of a crime based on prejudice, particularly when found in combination: (i) statements or declarations by the victim or alleged perpetrator that the crime was motivated by prejudice; (ii) the brutality of the crime and signs of animosity (including cases of homicide in which the nature and level of violence appeared to go beyond a mere intent to kill and were directed at punishing or "erasing" the identity of the victim); (iii) insults or comments made by the alleged perpetrator(s) that made reference to the sexual orientation and/or gender identity of the victim(s); (iv) the victim's status as an activist in LGBT issues or a defender of LGBT persons and their rights, or the victim's participation in events to recognize the diversity of LGBT people; (v) the presence of a known bias against LGBT persons on the part of the perpetrator, or situations in which the perpetrator is part of a group which is considered to be biased against LGBT persons; (vi) the nature or significance of the place where the violence or incident took place, or from where the victims were lured (for example, a place known to be frequented by LGBT persons, or an area where sex work involving trans persons is known to take place); and (vii) the victim or victims having been part of a pair or group of LGBT persons at the time the violence occurred.
505. The IACHR wishes to stress that the list of elements in the preceding paragraph is not exhaustive, and a crime can be prejudice-motivated in the absence of any of these elements. In other words, not all crimes against LGBT persons or those perceived as such will have all or even some of these characteristics. When a crime is committed against LGBT persons, States must ensure from the very beginning of the investigation that there is an examination into the motives of the attack, and that this examination includes consideration of the relevance of the victim's sexual orientation or gender identity, real or perceived. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.
506. The IACHR urges OAS Member States to take into account the specific circumstances of how violence based on prejudice is manifested in their countries, and to consult civil society organizations and LGBT activists in order to adequately craft protocols that set out the indicators of potential prejudice-motivated crimes that are relevant to investigations in the given country. The IACHR highlights that this recommendation is not limited to OAS Member States that already have in place hate crime legislation or aggravated penalties for crimes committed based on prejudice against the sexual orientation and/or gender identity of the victims. Rather, this recommendation is directed to all OAS Member States, because the right to truth, in this case, the right to know whether or not an act of violence was motivated by prejudice against LGBT persons, is a key component of the right to

access justice and reparations. As the IACHR has established, “the right of a society to have full knowledge of its past is not only a form of reparation and clarification into what has happened, but is also aimed at preventing future violations.”<sup>1408</sup>

507. The European Court of Human Rights affirmed in a recent decision that “[w]hen investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives.”<sup>1409</sup> The European Court further indicated that this obligation implies that the State make its best efforts to do “whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by gender-based discrimination.”<sup>1410</sup>
508. The European Court affirmed that “[t]reating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights... and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes.”<sup>1411</sup> The European Court further stated that the absence of a meaningful investigation, which includes diligent efforts to unmask motives of prejudice, undermines public confidence in a State’s anti-discrimination policy.<sup>1412</sup>
509. The IACHR recalls that both the Commission and the Court have issued guidelines on how to conduct effective and thorough investigations into violent deaths, including the need to identify victims and witnesses, recover probative material, exhaustively search the crime scene, and adequately preserve evidence throughout the chain of custody.<sup>1413</sup> The Commission highlights that, in addition to opening lines of investigation from the very outset that take into account the possibility of prejudice-based motives, and conducting investigations that are free from stereotypes related to sexual orientation and gender identity of the victim, OAS Member States must take into account the general context of bias, prejudice, and violence against LGBTI persons in their countries, which may be more profound in places outside of the major cities. Further, in conducting these investigations, State authorities should rely on expert witnesses who are able to identify the often-

<sup>1408</sup> IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdáme, El Salvador, April 13, 2000, para. 148, cited in IACHR, Report *The Right to Truth in the Americas*, OEA/Ser.L/V/II.152 Doc. 2, August 13, 2014, para. 124 (hereinafter “IACHR, *The Right to Truth in the Americas*, 2014”).

<sup>1409</sup> This case concerns the ill-treatment of a group of people detained following a LGBT-Pride March, which was disrupted by counter-protesters, held in Tbilisi, Georgia on May 17, 2002.

<sup>1410</sup> European Court of Human Rights, *Identoba and others v. Georgia*, (*Application no. 73235/12*), May 12, 2015, para. 67.

<sup>1411</sup> European Court of Human Rights, *Identoba and others v. Georgia*, (*Application no. 73235/12*), May 12, 2015, paras. 67, 77.

<sup>1412</sup> European Court of Human Rights, *Identoba and others v. Georgia*, (*Application no. 73235/12*), May 12, 2015, para. 80.

<sup>1413</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 193-194. I/A Court H.R., *Case of González et al., (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 300 and ff.

nuanced discrimination and prejudice against diverse sexual orientations and gender identities, which is pervasive and embedded in the societies of the region. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to take all necessary measures in the search for the truth, in order to clarify what happened and unmask possible discriminatory motives.

### **C. States' obligation to provide reparations for human rights violations**

510. Every violation of an international obligation to respect and protect human rights which results in harm creates a duty of the State to make adequate reparations.<sup>1414</sup> The word *reparation* is an umbrella term that covers the various ways in which a State may make amends for its failure to comply with its international human rights responsibilities.<sup>1415</sup> The obligation to investigate, as examined in the previous section, also constitutes a form of reparation, given its link to a victim's right to know the truth of what occurred, including the right to know the accused's motives regarding the crime committed. This extends beyond the victim, or the victim's next of kin, to society as a whole. This is because one purpose of recognizing a right to know the truth is the prevention of the repetition of the wrongdoing that occurred.<sup>1416</sup> The IACHR has also affirmed that the State can adopt means of reparation that are both judicial and non-judicial.<sup>1417</sup>
511. The Inter-American Court has further established a link between victims' access to justice and the right to truth, affirming that States must ensure that "victims or their next of kin have full access and legal standing at all the stages of the investigation and prosecution of those responsible."<sup>1418</sup> In this regard the IACHR has been informed that trans women who are killed often do not have relatives who will come forward and claim the body or seek justice on behalf of the deceased. Due to the loss of ties with immediate family and other relatives that trans persons often experience, it may fall to the deceased's "social family," which often comprises other trans women, to seek justice. However, such persons may be barred from acting on behalf of the deceased, in the absence of a blood relationship, and may themselves face discrimination in their attempts to seek justice in the name of the deceased. It is very likely that this situation hinders access to justice in cases involving victims who are trans women.

<sup>1414</sup> See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs (Art. 63.1 American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25, cited in IACHR, *The Right to Truth in the Americas*, 2014, para. 122.

<sup>1415</sup> See, *inter alia*, I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of August 27, 1999. Series C No. 39, para. 41, cited in IACHR, *The Right to Truth in the Americas*, 2014, para. 122.

<sup>1416</sup> IACHR, *Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador*, April 13, 2000, para. 148, cited in IACHR, *The Right to Truth in the Americas*, 2014, para. 124.

<sup>1417</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, cited in IACHR, *The Right to Truth in the Americas*, 2014, para. 122.

<sup>1418</sup> IACHR, *The Right to Truth in the Americas*, 2014, para. 126, citing several Inter-American Court decisions.

512. The Commission wishes to highlight that adequate reparation for human rights violations resulting in harm includes measures that are tailored to the individual victim or next of kin and are calculated to provide adequate restitution, compensation, and rehabilitation for the victim, and also includes general measures of satisfaction (*medidas de satisfacción*) and guarantees of non-repetition.<sup>1419</sup> The Inter-American Court has further stated that in the context of structural discrimination, “the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”<sup>1420</sup>
513. Specifically with respect to reparations regarding intersex persons, the IACHR notes that the International Intersex Forum’s Public Statement has called for the provision of “adequate redress, reparation, access to justice and the right to truth.”<sup>1421</sup> Additionally, the Council of Europe has acknowledged the position of the German ethics council, indicating that there should be “at least symbolic compensation especially to those who, on account of what would now be seen as incorrect medical treatment, are afflicted with physical or psychological suffering and often also incur expense that would not have arisen without this treatment.”<sup>1422</sup> The UN Committee on the Rights of the Child has also affirmed that intersex persons and their relatives who are victims of these medical interventions should receive reparation and compensation.<sup>1423</sup>
514. The IACHR has received reports of measures adopted by various OAS Member States seeking to provide reparations for harm caused by violations of human rights. In Argentina, for example, a Buenos Aires court ordered the local government to pay the minimum wage to five elderly trans women –not in exchange for work performed, but as a government compensation to those individuals– as “extraordinary and reparative subsidies,” given the historical situation of marginalization and discrimination they had suffered.<sup>1424</sup> These reparations were also granted to compensate for the women having suffered under the situation of generalized institutional violence and police abuse against the trans women community in Buenos Aires, Argentina.<sup>1425</sup> Accordingly, the Argentinean Agency against Discrimination, Xenophobia and Racism (“INADI,” in

<sup>1419</sup> See, *inter alia*, IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, paras.236-237; among others, cited in IACHR, *The Right to Truth in the Americas*, 2014 para. 123.

<sup>1420</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450, cited in IACHR, *The Right to Truth in the Americas*, 2014, para. 123.

<sup>1421</sup> International Intersex Forum’s Public Statement cited in Council of Europe, Issue Paper: *Human Rights and Intersex People*, 2015, p. 51.

<sup>1422</sup> Council of Europe, Issue Paper: *Human Rights and Intersex People*, 2015, p. 51.

<sup>1423</sup> ONU, Comité de Derechos del Niño, Observaciones Finales del cuarto informe periódico de Chile, CRC/C/CHL/CO/4-5, 15 de octubre de 2015, paras. 48-49.

<sup>1424</sup> Página 12, “*Reparación por tantos daños*,” October 3, 2013 (Available in Spanish only). See also, Diario Popular, “*Ordenan al Gobierno porteño que otorque subsidio a una trans*”, October 3, 2013 (Available in Spanish only).

<sup>1425</sup> Página 12, “*Reparación por tantos daños*,” October 3, 2013 (Available in Spanish only). See also, Diario Popular, “*Ordenan al Gobierno porteño que otorque subsidio a una trans*”, October 3, 2013 (Available in Spanish only).

Spanish) stated that the State had a duty to correct decades of invisibility and exclusion affecting trans persons.<sup>1426</sup> The Commission has also been informed that there is a bill pending in the Argentinean Congress, presented by several trans civil society organizations, which would mandate the provision of reparations to trans persons, due to institutional violence experienced in the past by many trans persons in Argentina because of the enforcement of legal provisions against cross-dressing and sex work, among others.<sup>1427</sup> The IACHR encourages the Argentinean State to pass this law.

515. LGBTI persons in Colombia have been prioritized to receive comprehensive reparations as victims of human rights violations, through Resolution 0223, which came into force in 2013. As of September 2014, at least 1,152 LGBTI persons had been registered as victims under this Resolution.<sup>1428</sup> Further, the State has informed the IACHR that its reparations program for victims of the armed conflict has benefited 880 internally displaced persons who are LGBT.<sup>1429</sup> The Commission was also informed that the Center for Historical Memory project now includes special attention to the historical memory of LGBT persons.<sup>1430</sup> Regarding Ecuador, the IACHR was informed by a civil society organization that the national law on truth, justice, and reparation for persons who have suffered serious crimes applies to LGBT persons.<sup>1431</sup>
516. The Commission calls OAS Member States to adopt measures to guarantee that LGBTI victims of human rights violations and their next of kin have effective access to reparations, in accordance with international legal standards. States must design and implement reparations programs that take into account the specific needs of lesbian, gay, bisexual, trans, and intersex persons, and which are the result of consultative processes with civil society organizations.

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<sup>1426</sup> INADI (National Institute against Discrimination, Xenophobia and Racism; acronym in Spanish), "*Hacia una Ley de Identidad de Género*," 2012, p. 7. See also, "*En un deber el pedir perdón*," January 23, 2012.

<sup>1427</sup> INADI (National Institute against Discrimination, Xenophobia and Racism), "Proyecto de Ley de reparación histórica para la comunidad trans", 11 de noviembre de 2014.

<sup>1428</sup> IACHR, Annual Report 2014, *Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia*, citing: State of Colombia, *Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report*. Note S-GAIIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, p. 351.

<sup>1429</sup> State of Colombia, *Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report*. Note S-GAIIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, p. 352.

<sup>1430</sup> State of Colombia, *Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report*. Note S-GAIIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, pp. 353-354.

<sup>1431</sup> Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by 'Fundación Manos que Construyen Paz'(Colombia), received by IACHR Executive Secretariat on December 20, 2013 p. 14.

CHAPTER 7  
CONCLUSIONS AND  
RECOMMENDATIONS



# CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS

517. In this Report the Inter-American Commission has highlighted pervasive violence in the Americas against lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, in all spheres of public and private life, and even in countries where there have been significant advances in law and policy regarding the rights of LGBTI persons. The Commission has described multiple forms of violence – often involving high levels of cruelty – that are aimed at punishing non-normative sexual orientations and gender identities, or persons whose bodies are different from standard female and male bodies. The IACHR has also examined the diversity of this violence and the specific and differentiated impact it has on groups or sectors of the population that have traditionally been subject to discrimination. At the root of this violence is wide-spread discrimination and intolerance regarding diverse sexual orientations, gender identities, gender expressions and persons whose bodies defy socially body presentations. States, through their action and inaction, enable this discrimination and intolerance, and in some instances even fuel it.
518. Societies in the Americas are dominated by principles of heteronormativity, cishnormativity, and the sex and gender binaries. Further, there is widespread intolerance toward LGBTI persons or those perceived as such, as well as the failure of States to effectively and adequately investigate and punish violence based on prejudice. In this Report, the IACHR concludes that the generalized context of social discrimination and intolerance regarding this diversity, combined with lack of effective investigations, and the absence of a differentiated approach to investigate, prosecute, punish, and provide reparations to crimes committed against LGBTI persons, are elements that have the effect of condoning and tolerating the violence, resulting in impunity and repetition.
519. The IACHR recognizes certain positive steps taken by States in the region in the areas of law and policy, but highlights that, by and large, States in the region have not integrated a differentiated approach that takes the rights of LGBTI persons into account in the domestic legal framework, public policies, and Executive-led initiatives and programs. The Commission notes that impunity regarding extrajudicial executions, killings, torture and other acts of cruel, inhuman, and degrading treatment, and other serious acts of violence against LGBTI persons is widespread. Even beyond this, there are countries in which violence is fueled by

legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

520. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals motivated by the prejudice against their sexual orientation and gender identity are investigated, and that the perpetrators are brought to justice. To this end, States are urged to strengthen their national institutions with a view to preventing and effectively investigating acts of violence and human rights violations against LGBTI persons, ensuring judicial protection for victims, bringing perpetrators to justice, and providing adequate reparations to victims.
521. Based on the findings of this Report, the Inter-American Commission on Human Rights issues the following recommendations to OAS Member States in order to protect and guarantee the rights of lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, to a life free from violence in the countries of the Americas.

## GENERAL RECOMMENDATIONS

1. Undertake efforts and allocate sufficient resources to systematically collect and analyze data on the prevalence and nature of violence and discrimination based on prejudice against LGBTI persons, or those perceived as such. Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against LGBTI persons, and for formulating any needed policy changes. In collecting this data, States must take into account the following:
  - a. Data collection efforts must be carried out in coordination with all branches of government, and, where applicable, with Offices of the Ombudsperson, Offices of Public Prosecution, and Public Defender’s Offices. Data collection systems must be capable of gathering information from a wide variety of sources including, but not limited to, police, forensic agencies, tribunals and courts, prosecution and public defender offices, all other relevant agencies of the justice system, ombudspersons’ offices, agencies providing assistance to victims, hospitals, schools, shelters, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans and intersex persons.
  - b. Data collected must include information on the impact of legislation criminalizing same-sex intimacy between consenting adults in private, legislation against cross-dressing, legislation against loitering, and legislation aimed at protecting “public morality” (*moral pública*), and “*buenas costumbres*”. Data collection in this regard must include

disaggregated information on complaints and prosecutions related to the targeted application of these laws to LGBT persons, or those perceived to be LGBT.

- c. States must collect data on human rights violations against intersex persons, including the prevalence of medical treatment of and surgeries performed on intersex persons, particularly surgical interventions aimed at altering the appearance of the genitals to make them more “female” or “male”. Data in this regard must include the review of medical protocols and practices in public and private hospitals.
  - d. States must undertake efforts to collect data on violence against LGBTI persons that is disaggregated as much as possible according to multiple factors, such as: ethnicity; race; sex; gender; migration status and situation of displacement; age; status as a human rights defender; situation of deprivation of liberty; socio-economic status; among others.
  - e. Data collection systems must collect information in order for States to be able to understand the underlying causes of violence against LGBTI persons, as well as which groups within the overall LGBTI population are more vulnerable to certain types of violence. The collected information must include data on any patterns among LGBTI victims, such as: lack of access to education; lack of access to the formal labor market; lack of access to adequate housing; barriers to access other rights; the places where the acts of violence or discrimination took place; and the occupation of the victim. Regarding the occupation of the victim, the data must also record whether the act of violence or discrimination took place while the person was working, including carrying out sex work or survival sex. The characterization of the perpetrators must include, among other information, their relationship with the victim, if any. Other elements –such as the place where the violence took place- are also important to understanding violence based on prejudice.
2. Adopt the necessary measures to prevent torture, cruel, inhuman and degrading treatment or any form of police abuse against LGBTI persons, including protocols and guidelines directed toward law enforcement agents, and sensitization and training in: human rights; non-normative sexual orientations and gender identities and diverse bodies; and the rights of LGBTI persons.
  3. Design and implement policies and programs to eliminate stigmatization, stereotyping and discrimination against LGBTI persons, or those perceived as such. Adopt comprehensive measures to encourage respect for the rights of LGBTI persons and social acceptance of diversity in sexual orientations, gender identities and persons who view themselves outside of the man/woman binary or whose bodies do not coincide with the socially accepted standard for male and female bodies.

4. Adopt measures to eradicate social stigma regarding intersex persons, which includes urgent measures to raise awareness, through policies and programs that sensitize the general public and the medical community, of human rights violations faced by intersex persons.
5. National Human Rights Institutions (NHRIs) are urged to strengthen their work on the promotion and protection of the human rights of LGBTI persons, including specific measures to counteract prejudices and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence against them. NHRIs are also urged to conduct outreach to intersex children and their families, to provide victim support services, facilitating contact with other intersex persons and with peer support groups.
6. Establish or strengthen specialized departments or units within Offices of the Ombudspersons, as well as other State institutions, to address the situation of violence and discrimination faced by LGBTI persons.
7. Adopt measures, including legislation, public policies, and State-run programs, to address the underlying causes of violence against trans and gender non-conforming persons. These measures must ensure, among other things, that trans persons have access, without discrimination, to formal employment, education, health care, and housing.
8. Review legislative frameworks that criminalize and stigmatize sex workers.
9. Make necessary amendments to law and public policy to prohibit medically unnecessary procedures on intersex persons, when such procedures are administered without the free informed consent of the person concerned.
10. Undertake all necessary measures to ensure compliance with the obligation to adequately redress human rights violations and provide reparations to LGBTI persons and their relatives who are victims of human rights violations.
11. Ensure that non-governmental organizations, civil society actors, and LGBTI persons and support groups, have direct participation in, and are systematically consulted and made part of decision-making processes regarding the development of legislation, public policies, and programs to address the human rights of LGBTI persons.
12. Undertake measures to follow-up on the commitments made by OAS Member States via resolutions passed at the OAS General Assembly, concerning human rights, sexual orientation, gender identity, and gender expression.
13. Undertake efforts to sign and ratify the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted by the OAS General Assembly on June 5, 2013.

## RECOMMENDATIONS AIMED AT THE EXECUTIVE BRANCH

14. Take immediate steps to impose an explicit and formal moratorium on the enforcement of legislation that criminalizes consensual sex between persons of the same sex, laws against “gross indecency” and “serious indecency” -in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse- and legislation criminalizing cross-dressing.
15. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that protect “public morality” and “good conduct” (“*buenas costumbres*”) on vaguely defined grounds, are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.
16. Adopt comprehensive and countrywide public policies that guarantee the rights of LGBTI persons to be free from violence and discrimination with the participation of LGBTI persons.
17. Condemn and take a public stand against acts of violence and discrimination based on sexual orientation, gender identity and expression, and bodily diversity. Publicly call for effective and impartial investigations, sending a strong social message from the highest political level, that violence based on prejudice is not tolerated. Issue, whenever possible, positive public statements regarding the importance of defending, protecting, and promoting the human rights of LGBTI persons.
18. Undertake Executive-led approaches and responses to violence and discrimination against LGBTI persons, such as measures to initiate and maintain public debate around the underlying causes of violence against LGBTI persons and measures to prevent and combat it.
19. Adopt measures to ensure that public officials respect the rights of persons with diverse sexual orientations and gender identities and expressions. Public officials must respect human rights defenders and the spaces where their claims are debated, considered, and decided. Where these spaces do not exist, States must promote their existence as a means of ensuring democratic and pluralistic societies across the Americas.
20. Design and conduct educational campaigns, in coordination with ministries of education, in order to eliminate stereotypes, stigma, and invisibility surrounding intersex persons in school curricula. Ensure that education policies are specifically designed to modify harmful social and cultural patterns of conduct. The principles of equality and non-discrimination, with a special focus on sexual, gender, and bodily diversity, should be key elements of such policies.
21. Conduct awareness-raising and sensitization campaigns at the national level concerning the short-term and long-term effects of so-called “normalizing” interventions on intersex children.

22. Ensure that programs and policies designed to protect and promote the rights of LGBTI persons are sufficiently funded and staffed with personnel trained in the specific fields of non-normative sexual orientations, gender identities and expressions, and human rights.

## **RECOMMENDATIONS AIMED AT THE LEGISLATIVE BRANCH**

23. Take measures to repeal laws that criminalize consensual same-sex intimacy, laws prohibiting “gross indecency” and “serious indecency,” in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse, and legislation criminalizing cross-dressing. In the meantime, take immediate steps to support an explicit and formal moratorium on the enforcement of these laws.
24. Adopt measures to modify or repeal legal provisions that penalize public conduct on vaguely defined grounds related to the protection of “public morals.” Such provisions have a disproportionate impact on LGBT persons, or those perceived as such.
25. Enact anti-discrimination legislation or amend existing legislation in order to prohibit all forms of discrimination, that include sexual orientation, gender identity and gender expression, sex characteristics or intersex status.
26. Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates.
27. Enact hate crimes legislation – either through amendments to existing legislation or through the adoption of new laws – to identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity.
28. Adopt laws and national regulations expressly prohibiting non-medically necessary surgery and related medical intervention for intersex children and intersex persons, when administered without their full and informed consent.
29. Adopt legislation to punish hate speech, in accordance with the American Convention on Human Rights and the standards established by the Inter-American Commission and Court, as developed in Chapter 4 of this Report.
30. Undertake the necessary measures to ensure that LGBTI persons are not excluded from the legal frameworks that seek to protect people from violence within the families, domestic unit or any intimate relationship.

## RECOMMENDATIONS REGARDING ACCESS TO JUSTICE

31. Take all necessary measures to apply due diligence in preventing, investigating, punishing and providing reparations regarding violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, the latter of which includes education and health facilities.
32. Undertake effective, prompt and impartial investigations into killings, torture, and acts of cruel, inhuman and degrading treatment, as well as other acts of violence against LGBTI persons.
  - a. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to take all necessary measures in the search for the truth, in order to clarify what happened and establish possible discriminatory motives.
  - b. In conducting these investigations, State authorities should rely on experts who are able to identify the often-nuanced discrimination and prejudice against LGBTI persons which is pervasive and embedded in the societies of the region.
  - c. Investigations should not be limited to disciplinary proceedings. Rather, criminal proceedings should be initiated in all instances of human rights violations against LGBTI persons committed by police and other law enforcement agents.
33. Take measures to ensure from the very beginning of the investigation that there is an examination into the motives of the act of violence, and that this examination includes consideration of the relevance of the victim's sexual orientation or gender identity, real or perceived.
34. Establish specialized prosecutorial units or appoint specialized prosecutors to investigate and prosecute crimes committed against LGBT persons. Staff them with trained personnel in the fields of human rights and non-normative sexual orientations and gender identities.
35. Adopt measures to: (i) address deficiencies in the investigation and prosecution of cases of violence based on sexual orientation and/or gender identity; and (ii) tackle the many specific obstacles and barriers faced by LGBTI persons when they seek justice.
36. Ensure that investigations are not permeated by prejudice based on the real or perceived sexual orientation and/or gender identity of the victim or the perpetrator.
37. Undertake the necessary legal and policy changes to expressly indicate that the sexual orientation, gender identity, or gender expression of victims can

never be used to establish a partial or full justification of crimes committed against them.

38. Strengthen public legal aid services—including legal advice, assistance, and representation—and ensure that LGBTI victims of crime are afforded access to justice. This includes adopting measures to ensure that victims of discrimination and violence are aware of and have access to effective legal remedies.
39. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that penalize public conduct on vaguely defined grounds related to the protection of “public order,” are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.
40. Adopt measures to guarantee the life, security, and personal integrity of those who report killings and other instances of prejudice-based violence, particularly if the alleged perpetrators are state agents or member of illegal armed groups or gangs.
41. Adopt protocols and prioritize specialized training for “justice operators” (including judges, prosecutors, and public defenders), regarding the human rights of LGBTI persons, in accordance with international human rights law and standards on sexual orientation, gender identity, and bodily diversity, particularly taking into account the following:
  - a. Protocols and training must ensure that justice operators do not subject victims, witnesses, and those accompanying them to ill or discriminatory treatment. Law enforcement agents should respect the gender identity of every person and refer to persons with their preferred pronouns.
  - b. Victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBTI victims, because they may fear further victimization following the disclosure of their sexual orientation, gender identity or bodily diversity in public.
  - c. Protocols and training should include a component on how to identify elements or indicia that may be key in identifying whether crimes were committed based on prejudice toward sexual and gender diversity.
  - d. Training should be frequent and periodic and include clear explanations of concepts that are central to sexual orientation, gender identity, and bodily diversity. Protocols and training should acknowledge, and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities.

- e. Training should also include information on local trends concerning violence based on sexual prejudice, and should be made aware of the existence of groups, where they are present, that may specifically target LGBTI persons.
- f. Protocols and training should be directed not only at judges and prosecutors, but at all state employees in the justice sector.

## **SPECIFIC RECOMMENDATIONS: CONTEXTS OF VIOLENCE**

### **FREEDOM OF EXPRESSION**

- 42. Undertake all necessary measures in order to ensure that LGBTI persons are able to exercise their right to freedom of expression without discrimination.
- 43. Establish an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and expressive needs of LGBTI individuals and groups.
- 44. Take appropriate steps to combat hate speech against LGBTI persons on the basis of the principles and standards developed in this Report. Ensure that these measures form part of a comprehensive approach that goes beyond legal measures and includes preventive and educational measures to address and respond to hate speech. Preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice regarding the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.
- 45. Adopt legislation to punish hate speech that constitutes incitement to lawless violence against LGBTI persons, in accordance with Article 13(5) of the American Convention on Human Rights and the principles and standards established by the Inter-American Commission and Court, as set out in Chapter 4 of this Report.
- 46. Raise awareness among public officials at all levels of their responsibility to publicly reject hate speech against LGBTI persons whenever it occurs and refrain from statements which may reasonably be understood as legitimising hatred or discrimination against them. When appropriate, establish appropriate sanctions for hate speech that constitutes incitement to lawless violence.

47. Take appropriate measures to strengthen the role of public broadcasters to serve the informational and expressive needs of the LGBTI community, as well as to promote awareness of issues that concern this community.
48. Regarding the media, the IACHR recommends the following:
  - a. States should encourage media to play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to affected groups and by giving members of these groups an opportunity to speak and to be heard.
  - b. States should promote that journalistic activities be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State.
  - c. States should stimulate the adoption of voluntary professional codes of conduct for the media and for journalists, because these actors can play a fundamental role in combating discrimination and in promoting equality principles. These codes can include being alert to the danger of the role media outlets can play in furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.

## **LAW ENFORCEMENT**

49. Undertake all measures to prevent instances of extrajudicial executions, torture, and other cruel, degrading and inhuman treatment against LGBTI persons by the police and other law enforcement agents.
50. Adopt the necessary measures to reduce police profiling, selective pat downs and arbitrary arrests of trans women, trans women of color, and LGBT persons engaged in sex work. Ensure that police and other law enforcement agents do not detain persons because of their race, socioeconomic status, and/or the perception of their sexual orientation, gender identity, or gender expression.
51. Eradicate deeply rooted practices of ill-treatment, abuse and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints.
52. Undertake the necessary measures to ensure that there are effective mechanisms to denounce and investigate cases of torture, cruel and inhuman treatment, police abuse and other acts of violence perpetrated by law enforcement agents.
53. Establish protocols and conduct trainings of police and law enforcement agents regarding human rights and the rights of persons with non-

normative sexual orientations and gender identities, in order to curtail abuses and violence against LGBTI persons, taking into account the following:

- a. Protocols and training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing.
- b. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Law enforcement agents should respect at all times the gender identity of all persons, and refer to them using their preferred pronouns.
- c. Attention protocols, including those related to mechanisms and processes to present a complaint against these human rights violations must be public, and States must ensure that they are known by the general population, and in particular, by people under State custody.

## HEALTH

54. Design and implement public policies that ensure the rights of LGBTI persons to access health care services, without being subject to discrimination, violence, or mistreatment of any kind, whether in public or private health care settings. Health care professionals should receive continuous training on matters of diversity around sexual orientation, gender identity, and sex characteristics. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.
55. Undertake measures to ensure that the regulatory entity of the state health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer “therapies” that attempt to “modify” sexual orientation and gender identity. Further, to adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject.
56. Regarding intersex persons,
  - a. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision

- not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.
- b. Incorporate specific safeguards for intersex children into legal instruments and medical protocols to protect and ensure their right to informed consent, particularly in the context of non-necessary medical interventions and surgery.
  - c. Adopt measures to ensure that professionals properly inform patients and their parents of the consequences of surgical and other medical interventions.
  - d. Undertake training of medical personnel and members of the medical community in order to provide adequate treatment and support to intersex persons and their families. Support intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood.
  - e. Ensure intersex persons have access to their medical records.
  - f. Adopt measures to prevent medical photography and unnecessary genital exams for non-consensual research concerning intersex persons and infants.
  - g. Ensure effective consultation with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.

## EDUCATION

57. Adopt measures to prevent violence against LGBTI students and teachers, or those perceived as such.
58. Ensure that education policies and curricula are specially designed to change harmful social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them.
59. Implement a comprehensive program of education concerning human sexuality in school curricula, at all levels, inclusive of a perspective of diversity around issues of gender, sexual orientation, gender identity, and bodily diversity. Comprehensive sexuality education can be a tool to combat discrimination and violence based on prejudice.

60. Revise school and university internal regulations and manuals, in both the public and private education systems, to prohibit discrimination on the basis of sexual orientation, gender identity, gender expression, or sex characteristics. Manuals must avoid punishment or sanction for using garments or accessories that are not socially associated with the sex assigned to the person at birth. Restrictions on same-sex displays of affection should not be more onerous than those included for different-sex couples.
61. Undertake measures to effectively prevent, investigate and sanction bullying and violence in the context of education, including on the basis of sexual orientation, gender identity, and bodily diversity, whether committed by peers, teachers, or school administrators.

## **SPECIFIC RECOMMENDATIONS: PARTICULAR GROUPS OF LGBTI PERSONS**

### **INDIGENOUS PEOPLES**

62. Undertake measures to address the violence as well as the underlying historical and structural causes of the violence against indigenous persons with diverse sexual orientations and gender identities.
63. Incorporate into legislation and public policy the specific needs of indigenous peoples with diverse sexualities, and adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexual orientations and gender identities.
64. Conduct research with a gender and intercultural perspective to take into account the specific needs of indigenous persons with non-normative sexual orientations and gender identities, and two-spirited persons.
65. Collect and disseminate disaggregated statistics and information on cases of violence against indigenous persons with non-conforming gender identities.

### **WOMEN**

66. Undertake measures to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.

67. Adopt measures to specifically include lesbian, bisexual, transgender, and intersex women in legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence.
68. Adopt measures to address the underlying causes of violence affecting trans women, including affirmative actions to provide formal employment; safe and accessible shelter; and access to education. Undertake specific measures to address violence against trans persons within the family.
69. Undertake actions to study and assess the pervasiveness of violence against lesbian, bisexual, transgender and intersex women. Adopt specific measures to prevent and investigate this type of violence, with a differentiated approach that takes into account power relations at the intersection of sex, gender, sexual orientation and gender expression.
70. Adopt measures to protect lesbian, trans, and bisexual women from violence, including sexual violence, perpetrated by gangs and illegal armed groups.

## **PERSONS IN THE CONTEXT OF HUMAN MOBILITY**

71. Adopt measures to specifically include LGBTI persons in legislation, public policies, and all government-led efforts regarding the rights of migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, internally displaced persons, and other persons who might be more vulnerable to human rights violations in the context of human mobility. Sexual orientation and/or gender identity are factors which may make persons more vulnerable to being internally displaced or trafficked.
72. Adopt the necessary measures to comply with the obligation not to return refugees to places where their life or personal integrity would be in danger on account of their actual or perceived sexual orientation and/or gender identity.
73. Undertake measures to ensure that the processes for the determination of refugee status are accesible to persons who flee because of reasons related to their sexual orientation or gender identity, real or perceived. Further, to design and develop guides and protocols, as well as trainings of agents that make the assessment and determination of refugee status, so that LGBTI persons seeking asylum are treated adequately and respectfully. These guides and trainings must include guidelines to ensure that decisions on the granting of refugee status are not based on stereotypes or inaccurate presumptions regarding LGBTI people. The IACHR urges States to take into account the guidelines and manuals published in this regard by the UN High Commissioner for Refugees (UNHCR).
74. Conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims. This training should be

developed in consultation with LGBT organizations and support groups. States are urged to take into account existing guidelines on the subject issued by the UN High Commissioner for Refugees.

75. Adopt specific guidelines and policies to ensure that asylum seekers and other migrants who are deprived of liberty are effectively protected from discrimination and violence, whether from custodial staff or other detained persons. This includes ensuring that the decision on where to house trans persons is done on a case by case basis, with due respect for the person's dignity, and whenever possible, with prior consultation with the trans person concerned.

## **CHILDREN AND YOUTH**

76. Undertake measures to fulfill the obligations to respect and guarantee the rights of LGBTI children and adolescents, or those perceived as such, to a life that is free from discrimination and violence, including in the context of the family, health facilities, and educational environments. Such measures include, among others, adopting comprehensive policies to prevent, investigate, and sanction violence against LGBTI children, regardless of where it takes place. Guides developed by UN agencies, such as UNESCO, can support such measures.
77. Eradicate from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities. Further, ensure that school curricula and textbooks include material that promotes respect for and acceptance of diversity.
78. Adopt measures to ensure that school regulations do not include discriminatory provisions against LGBTI students, or rules which could be used to discriminate against them.
79. Establish complaint mechanisms to enable the effective investigation of instances of violence against LGBTI children, regardless of where they occur.
80. Conduct trainings of state institutions, school and university authorities, and teachers, so they are able to identify abuse and violence against children in the home that is related to sexual orientation and gender identity, and provide appropriate measures of response. Training should also be geared toward promoting respect and tolerance regarding LGBTI persons.
81. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.

82. Create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood. Ensure that intersex persons and activists are consulted.
83. Adopt public awareness campaigns featuring LGBTI children and diversity in families so as to promote respect and acceptance of diverse family configurations, among other measures.
84. Adopt measures to protect all LGBTI children and young adults from violence – including LGBTI youth who are homeless – and ensure that effective child protection and support systems are in place, including shelters and other safety mechanisms for those in need of protection.
85. Adopt specific programs to provide support and protection to LGBTI children and their families. These programs, geared toward pregnant couples and families with both younger and older children, should incorporate positive models of raising children, as well as awareness-raising and sensitization with respect to non-normative sexual orientation, gender identity/expression and bodily diversity.
86. Ensure that children are consulted and take part in decision-making related to public policies and other State measures to prevent and address violence and discrimination against them.

## **HUMAN RIGHTS DEFENDERS**

87. Adopt measures to prevent, investigate, punish, and provide reparations for violence aimed at LGBTI human rights defenders, who face heightened vulnerability due to the intersection of their sexual orientation and/or gender identity or expression, their role as defenders, and the issues they address in their work. Specific measures should be designed and adopted, in consultation with defenders and activists, to effectively address violence against trans activists who are engaged in sex work. These measures also need to take into account the specificities of violence exerted against LGBTI human rights defenders by law enforcement agents, as well as gangs and members of illegal armed groups.
88. Undertake measures to ensure that effective investigations into killings and other acts of violence against LGBTI human rights defenders are carried out. Authorities must conduct an exhaustive analysis of every possible theory of the crime and thus establish whether or not the motive for the crime was the victim's promotion and defense of human rights and/or the sexual orientation or gender identity of the victim.
89. Continue or initiate dialogue with LGBTI human rights defenders, with the aim of learning about the problems they face with respect to violence or the threat of violence. Facilitating their active participation in the adoption of public policies in this regard.

90. Undertake measures to ensure that any attempt by authorities to question the legitimacy of the work of human rights defenders and their organizations will not be tolerated. Public officials must refrain from making statements that stigmatize human rights defenders and they must adopt specific measures of protection for LGBTI human rights defenders. Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.
91. Adopt measures to take into account the particular vulnerability to violence of LGBTI human rights defenders, within the broader group of human rights defenders, in the design and implementation of all State policies that are intended to protect human rights defenders.

## **AFRO-DESCENDANT PERSONS AND THOSE AFFECTED BY RACIAL DISCRIMINATION**

92. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and LGBTI persons of color.
93. Adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and diverse sexual orientation, gender identity, and gender expression affect LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.
94. Undertake effective actions to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons, and all those affected by racial discrimination.
95. Allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating cultural practices, prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Such preventive efforts should be part of an overall holistic strategy to provide restitution for acts of violence and discrimination as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.

## **PEOPLE LIVING IN POVERTY**

96. Adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and to continue to devote efforts and resources to eradicate poverty.
97. Undertake measures to address discrimination based on sexual orientation, gender identity, and sex characteristics when designing and implementing actions and programs to tackle poverty.
98. Ensure that the programs provided by the State for low income, homeless or unemployed persons are accessible to LGBTI persons. Persons should be able to decide their shelter based on their gender identity, and gender neutral shelters should be available.

## **PERSONS DEPRIVED OF LIBERTY**

99. Adopt urgent and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region's places of detention, including prisons and immigration detention centers. This includes the development of comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.
100. Ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not place undue restrictions on such LGBT persons. Restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons.
101. Adopt measures to prevent violence against LGBT persons deprived of liberty, including, but not limited to: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake and appropriate allocation within the prison or detention system; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers, as well as other detainees.
102. Implement effective measures to ensure due diligence in the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons.
103. Conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBT persons who are deprived of liberty.
104. Adopt the necessary measures to ensure that the decision on where to house trans persons in detention (including prisons, police lock-ups and migration detention centers), is conducted on a case by case basis, with due respect to

the person's personal dignity, and whenever possible, with prior consultation of the person concerned.