



The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in MEXICO

A Shadow Report

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Global Rights

International Gay and Lesbian Human Rights Commission (IGLHRC)

International Human Rights Clinic, Human Rights Program, Harvard Law School

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Introduction

The International Human Rights Clinic, Human Rights Program of Harvard Law School, Global Rights, and the International Gay and Lesbian Human Rights Commission (IGLHRC) have worked together to produce this report on the status of LGBT persons in Mexico.¹ The purpose of this report is to provide an evaluation of Mexico's compliance with the International Covenant on Civil and Political Rights (ICCPR) and to complement ongoing advocacy of greater protection and promotion of LGBT rights in Mexico.

Mexico ratified the ICCPR on March 23, 1981 and submitted its fifth periodic state report to the Human Rights Committee in October 2009. The Human Rights Committee will evaluate this report and consider Mexico's compliance with the ICCPR in March 2010. Shadow reports submitted by non-governmental organizations (NGOs) may serve as an additional source of information for UN committee members.

Executive Summary

Article 1 of the Mexican Constitution states that all individuals are guaranteed the protections and immunities found in the Constitution.² It prohibits discrimination based on ethnic or national origin, gender, age, disability, social status, health condition, religious opinion, preferences of any kind, civil status or any other reason which degrades human dignity.³ The Mexican Constitution does not specifically prohibit discrimination based on sexual orientation or gender identity. However, the general ban on discrimination based on preferences of any kind may encompass discrimination based on sexual orientation.⁴ Despite this strong anti-discrimination norm enshrined in the Constitution, LGBT persons in Mexico face violations of their human rights based on sexual orientation and gender identity.

Mexico has recently seen increased protection of the rights of LGBT persons. On March 4th, marriage for same-sex couples will become legal in the federal capital district of Mexico City.

A federal act prohibiting discrimination on the basis of sexual orientation in employment and occupation was passed in 2003⁵. This law prohibits any "distinction, exclusion or restriction" based, *inter alia*, on sexual orientation that "has the effect of impeding or annulling the

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² Mexican Constitution, Article 1.

³ *Id.*

⁴ Comisión de Derechos Humanos del Distrito Federal [CDHDF], Informe especial sobre violaciones a los derechos humanos por orientación o preferencia sexual y por identidad o expresión de género 2007-2008 18 (2008) [Hereinafter INFORME].

⁵ Ley Federal Para Prevenir y Eliminar la Discriminación, *available at* <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/262.pdf>

recognition or exercise of the rights and equality of all persons.”⁶ However, similar protections for discrimination on the basis of gender identity are not enshrined in law.

Mexico has also created a National Council to Prevent Discrimination (CONAPRED). CONAPRED is responsible for receiving and resolving complaints of discrimination in both the public and private sector. In addition, CONAPRED is charged with creating proactive antidiscrimination programs, and has been active in the field of LGBT rights, publishing numerous reports on the issue.

Despite these advances, however, LGBT persons continue to face discrimination and human rights violations based on their gender identity and sexual orientation. The overall culture in Mexico remains highly repressive in its attitudes towards LGBTI persons. The persistence of discriminatory sentiment towards the LGBTI community is illustrated by a recent poll of the Mexican population, which showed that 48.4% would never live with an LGB person and that 11.6% would never hire one.⁷

There have been multiple instances of discrimination and violence towards LGBTI individuals in Mexico over past few years, including hate crimes and serious abuses by state authorities, some of which are documented below. LGBT persons in Mexico face a serious threat of violence. One recent study has found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico.⁸ Another study indicates that 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had been assaulted in public spaces.⁹ Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police.¹⁰ Travesti and transgender persons are subjected to mass detentions, extortion, and physical abuse at the hands of police and military officials. LGBT persons face widespread employment discrimination in both the public and the private sector.

Despite these continuing problems, Mexico’s report fails to mention these violations. This report traces the numerous human rights violations LGBT individuals have suffered in the past few years even though Mexico has a duty to protect them from these violations under the ICCPR. It is our hope that the information contained in this report will aid the evaluation of Mexico’s adherence to the principles set forth in the ICCPR, and eventually lead to greater progress—and full acceptance—of the civil and political rights of LGBTI persons in Mexico.

⁶ *Id.* The law also defines discriminatory conduct to include, among other acts, “impeding access to public or private education; prohibiting free choice of employment, restricting access, permanency or promotion in employment; denying or restricting information on reproductive rights; denying medical services; impeding participation in civil, political or any other kind of organizations; impeding the exercise of property rights; offending, ridiculing or promoting violence through messages and images displayed in communications media; impeding access to social security and its benefits; impeding access to any public service or private institution providing services to the public; limiting freedom of movement; exploiting or treating in an abusive or degrading way; restricting participation in sports, recreation or cultural activities; incitement to hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion; promoting or indulging in physical or psychological abuse based on physical appearance or dress, talk, mannerisms or for openly acknowledging one’s sexual preferences.” *Id.*

⁷ Fernando Ríos, *Minimizan autoridades asesinatos de homosexuales*, EL SOL DE MÉXICO, July 18, 2009.

⁸ *464 crímenes de odio por homofobia en México: CCCCOH*, NOTIESE, May 19, 2009.

⁹ Mariana Saynes, México, *Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

¹⁰ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

Substantive Violations of the Convention

Articles 2(1) and 26 (Non-discrimination) and Article 3 (Gender Equality)

The ICCPR defines non-discrimination standards by which state signatories should abide in Articles 2(1) and 26. Article 2(1) state:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹

General Comment 31 to Article 2 holds state parties accountable for actions of private parties that encroach on ICCPR rights if the state has not provided measures to protect individuals from this encroachment.¹² Article 26 further qualifies the nature of the state's protection from discrimination, stating:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹³

The Human Rights Committee explicitly recognized the ICCPR's inclusion of sexual orientation in its 1994 decision *Toonen v. Australia*.¹⁴ In *Toonen*, the Committee applied Articles 2(1) and 26 to find discrimination based on sexual orientation.¹⁵

Mexico's constitution prohibits discrimination based on preferences, and federal legislation prohibiting discrimination on the basis of sexual orientation in employment and occupation was passed in 2003. This antidiscrimination legislation prohibits any "distinction, exclusion or restriction" based, inter alia, on sexual orientation that "has the effect of impeding or annulling the recognition or exercise of the rights and equality of all persons."¹⁶ This act does not provide protection against discrimination based on gender identity. Nevertheless, individuals experience societal discrimination in Mexico based on their sexual orientation or gender identity. A recent

¹¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A, 999 U.N.T.S. 171, art. 2 (Dec. 16, 1966) [hereinafter ICCPR].

¹² General Comment 31 to Article 2 of the ICCPR.

¹³ ICCPR, *supra* note 13, at art. 2.

¹⁴ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

¹⁵ *Id.*

¹⁶ Ley Federal Para Prevenir y Eliminar la Discriminación, available at <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/262.pdf>

study demonstrated that about 75% of Mexican LGB persons have faced discrimination based on their sexual orientation.¹⁷

Discrimination against LGBT persons has manifested in the form of homophobic public statements by prominent Mexicans, including public officials. The president of Mexico, Felipe Calderón, has stated that the Mexican Constitution establishes that marriage is only between a man and a woman.¹⁸ Prominent religious leaders have expressed similar opinions.¹⁹ The LGBT community should be protected from such public displays of homophobia.

The recent closing of the Sexual Diversity program of National Council to Prevent Discrimination (CONAPRED) is especially troubling.²⁰ CONAPRED is the organ of the Mexican government responsible for investigating discrimination across the country. The closing of its Sexual Diversity program is a step backward in the fight against discrimination, especially in the light of the numerous reports of discrimination, as described below.

Discrimination in State Penal Codes.

Discrimination against LGBT persons also remains in the Penal Code of Tamaulipas State. Despite the federal antidiscrimination act, and despite the passage of a similar state antidiscrimination law by the Tamaulipas State Congress²¹, the Tamaulipas Penal Code still includes homosexuality as a form of the crime of corruption of a minor.²² Additional penalties are imposed if the minor in question “acquires the habit of...homosexual practices.”²³ This legislation is absolutely incompatible with the antidiscrimination law in force in Tamaulipas and constitutes a particularly invidious form of discrimination against LGBT persons in the state.

Employment Discrimination

Despite the existence of federal anti-discrimination laws, LGBT people in Mexico face employment discrimination in Mexico. The situation is especially troublesome for transgender persons, as gender identity is not a protected category in the anti-discrimination law and as there is no country-wide law allowing amendments to birth certificates and other identification

¹⁷ Mariana Saynes, *México, Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

¹⁸ Claudia Bolaños, *Marcha comunidad lésbico-gay a Los Pinos*, EL UNIVERSAL, Feb. 7, 2010.

¹⁹ Filberto Cruz, *Denuncia penal contra el cardinal Norberto Rivera por discriminación*, EL SOL DE MÉXICO, Jan. 15, 2010.

²⁰ Gabriel Gutiérrez García, *Inoportuna, desaparición de del programa de diversidad en el CONAPRED*, ANODIS, Feb. 10, 2010.

²¹ Ley Para Prevenir y Eliminar la Discriminación en el Estado de Tamaulipas, Decreto No. LVIII-1146. Similar laws have been approved at state level in other jurisdictions.

²² Código Penal Para el Estado de Tamaulipas, Art. 192, *available at* <http://info4.juridicas.unam.mx/adprojus/leg/29/971/208.htm?s=>.

²³ Código Penal Para el Estado de Tamaulipas, Art. 193, *available at* <http://info4.juridicas.unam.mx/adprojus/leg/29/971/208.htm?s=>. Article 192 of the code reads: “Comete el delito de corrupción de menores e incapaces el que procure o facilite la corrupción de un menor de dieciséis años de edad o de quien no tenga capacidad de comprender el significado del hecho, mediante actos de exhibicionismo corporal, lascivos o sexuales, o los induzca por cualquier medio a la práctica de la mendicidad, la ebriedad, la toxicomanía, la prostitución, al homosexualismo, a formar parte de una asociación delictuosa, o a cometer cualquier delito”.

documents.²⁴ This exposes transgender people to invasion of privacy, marginalization, and discrimination, as will be explained in further detail below. Education professionals are also especially vulnerable to workplace discrimination.

Since 2007, Agustín Estrada Negrete, a gay special education teacher in a public school in Mexico State, has faced discrimination, threats, and imprisonment due to his sexual orientation.²⁵ In May of 2007, Negrete participated in a gay rights march. As a result of this, in June 2007 Negrete began to be subjected to homophobic statements in his place of work. Shortly thereafter, a fellow teacher presented an administrative claim against Negrete, citing the “bad example” he was setting for the student population by “dressing as a woman in public”.

Subsequently, on February 14, 2008, Negrete was informed that his license was about to expire and was presented with documents which included his falsified signature. On February 16th, as Negrete arrived at work, a fight broke out among the parents gathered at the school. Police had to be called in to calm the crowd.

Since that time, Negrete has been subjected to 18 warrants of arrest for illegal occupation of the school premises. On the 21st of June, one of these warrants was executed, and he was taken to the Social Readaptation Center of Cuauhtémoc City (Centro de Readaptación Social de Ciudad Cuauhtémoc). He was released on bail the next day. On May 7th, he went to the Palacio del Gobierno to attempt to resolve the situation, but was apprehended by police. He was taken to Almoloya Prison, where he was raped by the inmates. Again, he was released on bail the next day. Since that time, he has been faced with death threats and has been under the surveillance of the State Security Agency.

The National Council to Prevent Discrimination (CONAPRED) published a report in 2008 which highlighted the case of a transgendered woman who was fired from her job as a school teacher in a Naucalpan public school when she began to present as a woman at work.²⁶ After lodging a complaint with the State Human Right Commission, she reached an agreement in which she was to receive a different job.²⁷ However, she was not allowed to return to her work as a school teacher.

In June 2008, two gay men were fired from their jobs with the Cuauhtémoc Delegation, a borough of Mexico City, when their employers learned of their sexual orientation and HIV-positive status.²⁸ The couple was abused with homophobic slurs from their employers and

²⁴ Consejo Nacional Para Prevenir la Discriminación [CONAPRED], *La Transgeneridad y la transexualidad en México: En busequeda del reconocimiento de la identidad de género y la lucha contra la discriminación* 134 (2008) [Hereinafter TRANSGENERIDAD].

²⁵ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009. All facts cited below in this case are derived from this article.

²⁶ Consejo Nacional Para Prevenir la Discriminación [CONAPRED], *La Transgeneridad y la transexualidad en México: En busequeda del reconocimiento de la identidad de género y la lucha contra la discriminación* 130 (2008) [Hereinafter TRANSGENERIDAD].

²⁷ *Id.* at 132.

²⁸ Leonardo Bastida Aguilar, *Despidan autoridades de la delegación Cuauhtémoc a does trabajadores seropositivos*, NOTIESE, July 9, 2009.

accused of malfeasance upon their status being discovered; their work had not been criticized prior to this.

Even if the federal law prohibits discrimination in employment and occupation and offers remedies, cases of discrimination are reported. In June of 2009, two lesbian women were fired from their jobs because photos of them with their arms around each other were made public.²⁹ The women had previously been exposed to homophobic comments by their boss. The pair filed a complaint with CONAPRED.

Educational Discrimination

In November 2009, two lesbian students attending public high school were prevented from accessing school because of their sexual orientation.³⁰ Previously, they had been subjected to homophobic assaults, both verbal and physical, from teachers and students. One of the young women was struck by fellow students with a bag filled with rocks, which resulted in bruising. When she complained to her teachers, they responded that she had provoked the attack by being different from everyone else. The students presented a complaint to the State Commission for Human Rights, which concluded that no discrimination or rights violation had occurred.

A 2008 survey on transgender people found that about 50% had faced discrimination in the school system.³¹ This discrimination took various forms, including physical abuse and denial of academic support.³² In some cases, it led to slowed academic progress or to the transgender person leaving school.³³

Discrimination in same-sex families.

In *Young v. Australia*³⁴ and *X v. Colombia*³⁵, the Human Rights Committee argued that distinctions in benefits granted to unmarried same-sex and opposite-sex couples constitute a violation of articles 2 and 26. Same-sex couples who marry under Mexico City's same-sex marriage law would not be eligible for certain federal benefits afforded to opposite-sex couples.³⁶ Based on the reasoning of *Young* and *X.*, this would constitute a violation of the principle of non discrimination of articles 2 and 26.

Article 6 (Right to Life)

²⁹ *Denuncian lesbianos haber sido despedidas por abrazarse*, MILENIO, May 20, 2009.

³⁰ Rubisela Moreles Cruz, *Estudiantes de Morelos, víctimas de discriminación sexual en escuela*, LA JORNADA SAN LUIS, Nov. 27, 2009.

³¹ TRANSGEDERIDAD, *supra* note 29, at 168.

³² *Id.*

³³ *Id.* at 170.

³⁴ *Young v. Australia*, Communication No. 941/2000, U.N. Doc CCPR/C/78/D/941/2000 (2003).

³⁵ *X v. Colombia*, Communication No. 1361/2005, U.N. Doc CCPR/C/89/D/1361/2005 (2007).

³⁶ CNN, *La Asamblea en DF aprueba matrimonio gay*, 21 December 2009; Time, *Mexico City's Revolutionary First: Gay Marriage*, 24 December 2009, at <http://www.time.com/time/world/article/0,8599,1949953,00.html>.

Article 6 of the ICCPR guarantees every human being an inherent right to life that should be protected by law.³⁷ It states that “No one shall be arbitrarily deprived of his life.”³⁸ Nonetheless, despite the lack of systematic information, advocates report that individuals in Mexico are victims of killings due to their sexual orientation or gender identity.

Hate Crimes

Despite the fact that LGBT persons are frequently the victims of hate crime, there is no federal hate crimes statute.³⁹ The Federal District of Mexico City does have hate crimes legislation, but this is the exception rather than the rule.⁴⁰ There is also evidence to suggest that possible hate crimes are left uninvestigated or are dismissed as “crimes of passion”.⁴¹ One 2009 study demonstrated that 80% of homophobic murders are left unpunished.⁴² Another recent study found that between 1995 and 2007, 464 homophobic and transphobic hate crimes were committed in Mexico.⁴³ Lack of preventive measure and effective response by law enforcement agencies and the judicial system suggests state violation of articles 6 and 7 of the Covenant.

Reports indicate that in the first eight months of 2009, around 40 homosexual persons were murdered in Michoacán.⁴⁴ The majority of these deaths were concentrated in the Tierra Caliente area.⁴⁵ In January 2010, a travesti woman was beaten to death in Michoacán on her way to her place of employment.⁴⁶ She was found the next day with multiple contusions on her head and face.

In 2009, 15 LGBT persons were murdered in Guerrero State.⁴⁷ None of these crimes have been solved, and they have been characterized by the state as crimes of passion.

In July 2009, a gay man was murdered in Aguas Calientes.⁴⁸ He was found beaten in a pool of blood in his apartment by his partner.

In June 2009, a transgender woman was murdered in Puebla.⁴⁹ She worked as a performer in a travesti show. This was the third murder of a transgender person in Puebla in 2009 to that date.

³⁷ ICCPR, *supra* note 13, at art. 6.

³⁸ *Id.*

³⁹ Mexico City does have such a statute. *Tipifican crímenes de odio por homofobia en el DF*, ANODIS, Aug. 24, 2009.

⁴⁰ *Id.*

⁴¹ *Minimizan autoridades crímenes de odio: CDHDF*, ANODIS, July 20, 2009.

⁴² *Notimex, Impunes, el 80% de crímenes contra homosexuales*, EL ECONOMISTA, Nov. 16, 2009.

⁴³ *464 crímenes de odio por homofobia en México: CCCCOH*, NOTIESE, May 19, 2009.

⁴⁴ *Agencia Quadratín, Asesinados 40 gays en Michoacán en lo que va de 2009*, ANODIS, Aug. 24, 2009.

⁴⁵ *Id.*

⁴⁶ *Asesinan a golpes a homosexual en Zacapu*, CAMBIO DE MICHOACÁN, Jan. 31, 2010.

⁴⁷ *Ossiel Pacheco, Reporta ONG 15 asesinatos por homofobia en 2009 en el estado*, LA JORNADA GUERRERO, Oct. 13, 2009.

⁴⁸ *Asesinan a estilista homosexual*, AGUASDIGITAL, July 27, 2009.

⁴⁹ *Leonardo Bastido Aguilar, Asesinan a transgénero en Puebla*, NOTIESE, June 18, 2009.

In March 2009, a *muxe* (transgender woman) sex worker was murdered in Juchitán.⁵⁰ Local activists called the crime an act of homophobia perpetrated against the entire *muxe* community in the region. This was the fourth murder of a *muxe* in the city in the past eight years.

In 2005, Octavio Acuña, an HIV/AIDS activist in Querétaro, a central Mexican city, was stabbed multiple times in the condom shop he ran.⁵¹ Nothing was stolen from the shop, indicating that the motive was not robbery. The shop was a center for sexual rights and HIV/AIDS information for young people in the city, and had previously been targeted with graffiti and vandalism. In 2004, Acuña and his partner had made a complaint to the local Human Rights Commission that they had been discriminated against. No action was apparently taken on this complaint, and a few weeks before his murder, Acuña spoke out at a public meeting against this discrimination and inaction. Local human rights NGOs reported at the time that another gay activist was drugged and beaten in what appeared to be a hate-motivated attack and that officials have failed to carry out serious investigations into these hate crimes, instead attempting to blame them on other members of the gay community.

Article 7 (Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment)

LGBT individuals in Mexico experience police brutality prohibited under Article 7 of the ICCPR. Article 7 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵²

Nevertheless, the police and other state employees harass and assault individuals because of their perceived gender identity and/or sexual orientation in Mexico. A recent study indicates that 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and that 53.3% had been assaulted in public spaces.⁵³ Additionally, another survey has indicated that 30% of LGB persons in Mexico had been discriminated against by police and that 20% had been assaulted by police.⁵⁴

In particular, the sex workers in the travesti community experience habitual harassment and violence by both the police and the general public. In July 2009, men in a passing car shot at transgendered sex workers in Hidalgo.⁵⁵ Two women were hospitalized as a result of the attack.

Also in July 2009, two individuals, one of them a travesti sex worker, were forced into a van, where more than 10 military personnel proceeded to kick them in the head and chest and threaten them with guns.⁵⁶ The military threatened to rape them, kill them and their families, and to kill all the sex workers in the area one by one if they made a complaint. After stealing their money and clothing, the military personnel released the two individuals. A demonstration followed the

⁵⁰ *Asesinan a muxe en Juchitán*, NOTIESE, Mar. 13, 2009.

⁵¹ Amnesty International, Mexico: Fear for Safety 1 (2005) (available at <http://www.amnesty.org/en/library/info/AMR41/025/2005/en>).

⁵² ICCPR, *supra* note 13, at art. 7.

⁵³ Mariana Saynes, México, *Segundo en crímenes por homofobia*, ADIARIO, Jan. 4, 2010.

⁵⁴ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

⁵⁵ Emmanuel Rincón, *Balean a 2 transgénero en Hidalgo*, EXCELSIOR, July 27, 2009.

⁵⁶ *Agreden militares a trabajadores sexuales*, NOTIESE, July 7, 2009.

next day, during which the military confronted the gathered sex workers. The sex workers have filed a complaint with the Public Ministry.

In 2009, the LGBT group Comunidad Gay in Durango condemned extortion and sexual abuse of LGBT persons by members of the police.⁵⁷ The group stated that those affected have not filed criminal complaints because of their fear of reprisals. The group noted that the problem was especially grave for travestis; the police often assume that such persons are sex workers and demand sex or money in exchange for not arresting them.

In May 2007, approximately 40 female transsexual and transgender sex workers were detained and brutally assaulted by about 20 members of the Military Police in Ciudad Juárez in Chihuahua state.⁵⁸ The police stole money from the women and destroyed their homes. Many of the women were hospitalized, some of them in grave condition.

In 2004, a gay man was assaulted by guards in the Metro Collective Transportation System (STC-Metro).⁵⁹ He was detained by three guards, pulled into a room and beaten until he was bruised and his face was swollen. During the assault, the guards yelled “since you’re homosexual, you shouldn’t have been born” and that if they saw him around again, he knew what would be waiting for him. The guards also stole a chain and a gold ring. Upon speaking to the station chief, the man was able to identify his assailants and file a complaint. The Mexico City Human Rights Commission concluded that the man’s rights had been violated, but the director of the STC-Metro initially rejected this conclusion. Eventually, the STC-Metro agreed to training and an anti-discrimination campaign.

In 2004, Octavio Acuña and his partner filed a complaint with the Comisión Estatal de Derechos Humanos (CEDH), alleging that municipal police officers detained them in a public park and told them that “their sort” should not be there.⁶⁰ The CEDH apparently took no action on the case.⁶¹

Article 9 (Right to Liberty and Security of Person)

Article 9 of the ICCPR protects the right of individuals to be secure in their persons and to be free from arbitrary detention.⁶² The Article also protects the right of a detainee to be brought before a judge and informed of the charges against him and the right to protest an allegedly unlawful detention in a proper court.

Nevertheless, LGBT persons in Mexico are frequently detained without cause. LGBT persons are also subject to extortion and abuse at the hands of police. One recent study found that 11% of LGBT persons in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation.⁶³

⁵⁷ Saúl Maldonado, *Denuncian gays acoso policiaco en Durango*, LA JORNADA, Nov. 10, 2009.

⁵⁸ TRANSGENERIDAD, *supra* note 29, at 95.

⁵⁹ INFORME, *supra* note 4, at 65.

⁶⁰ AMNESTY INTERNATIONAL, *supra* note 53.

⁶¹ *Id.*

⁶² ICCPR, *supra* note 13, at art. 9.

⁶³ INFORME, *supra* note 4, at 58.

In July 2009, Vanessa, a transsexual woman, was detained by municipal police and threatened with rape.⁶⁴ Vanessa managed to record the encounter on her cell phone, which caused the police to detain her and bring her before a judge. Her cell phone was seized by the police and returned to her with the recording erased, and a fine of 600 pesos was imposed on her. Vanessa complained to the CEDH, which recognized that her detention was illegal and ordered that the fine be returned to her. The CEDH stated that Vanessa's case implicated "arbitrary detention, violation of the right to legality and security, violation of the right to personal security, false accusation and wrongful use of public services".

In April 2008 and December 2009, practices of social cleansing have been reported in the city of Cancun. At least 40 travesti sex workers have been robbed, beaten and arrested by the police in the area Supermanzana 63 of the municipality. Following the intervention of the local trans activists, the president of the municipality confirmed the action by the police that would have been justified by the need of "cleaning the garbage from the streets".⁶⁵

In October 2005, approximately 50 travesti sex workers were detained by police in Mexico City.⁶⁶ Arresting officers gave differing accounts of the reason for their arrest, with some claiming that it was part of a search for a murderer and others stating that it was in connection with robberies or drug charges. Despite the fact that no charges were ultimately filed, the police retained fingerprints and photographs of the detained individuals.

Transgender persons are also threatened by the existence of public morals laws throughout the country. These laws, found in several areas around the country, are often very vague, criminalizing such acts as "obscene exhibitions"⁶⁷, "causing a scandal in a public way"⁶⁸, "acting in such a way as to offend one or more persons"⁶⁹, "acting in ways which fail to respect human dignity, public morality and good customs".⁷⁰ Because these laws are so vague, they are frequently used by police officials to harass, detain, and extort transgender persons and travestis. For example, the International Gay and Lesbian Human Rights Commission has documented that the mere presence of a travesti person in public may be interpreted as an "obscene exhibition" by police in some states.⁷¹ Some travestis and transgender persons pay "fines" to police officials almost daily to avoid being detained under these laws, a clear act of extortion and a violation of the right to be free from arbitrary detention.⁷²

⁶⁴ Christian Rea Tizcareño, *Derechos Humanos de NL emite recomendación por 'detención arbitraria' de transexual*, NOTIESE, July 27, 2009.

⁶⁵ Email communication with a Mexican activist, sent on March 4th, 2010, on file with Global Rights.

⁶⁶ Mario Alberto Reyes, *Acuden travestis ante Derechos Humanos del DF*, NOTIESE, Oct. 20, 2005.

⁶⁷ This language is used in laws in Nuevo León, Jalisco, Veracruz, and Colima states, among others. IGLHRC, Informe a OACDH 2003.

⁶⁸ This language is used in Mexicali, Baja California, La Paz, Baja California, and Monterrey, Nuevo León, among others. *Id.*

⁶⁹ This language is used in Puebla. *Id.*

⁷⁰ This language is used in Cuernacava, Morelos. *Id.*

⁷¹ *Id.*

⁷² *Id.*

In December 2002 in Monterrey, a transgender activist was detained twice by police and accused of prostitution and offenses against the public order for “wearing women’s clothing in public”.⁷³ She then made a complaint to the State Human Rights Commission, which found that these detentions violated both the Mexican Constitution and the Universal Declaration of Human Rights.

Article 10 (Humane Treatment of Detainees)

Article 10 of the ICCPR states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁷⁴

As noted above, when special education teacher Agustín Estrada Negrete was sent to Almoloya Prison, he was raped by fellow inmates.⁷⁵ It is the responsibility of the state to ensure the humane treatment of detainees. Estrada Negrete’s rape constitutes a violation of the Article 10 provisions mandating the humane treatment of anyone who is deprived of his or her liberty by the state.

Article 17 (Right to Freedom from Arbitrary Interference with Privacy, Family, and Home)

Article 17 ICCPR establishes that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”.⁷⁶

The lack of legal recognition of transgender and *travesti* individuals’ identity in ID documents before gender reassignment exposes them to risk of abuses and discrimination and heavily affect their privacy, jeopardizing their enjoyment of the right enshrined by article 17 ICCPR. The City Code of Mexico City federal district provides that transgender people may change the sex and name on their birth certificate without a requirement of gender reassignment surgery.⁷⁷ However, the lack of similar protection at a national level is troubling. This is especially so as a birth certificate is required to exercise civil and political rights—a birth certificate is required to obtain a voter identification card.⁷⁸ Having identification papers which contradict one’s appearance may place gender non-conforming persons at risk for rights violations.

Marriage between same-sex couples recently became legal in federal capital district of Mexico City, providing important protection to LGBT persons there. In a totally different perspective, in Yucatán state the legislative assembly recently rewrote the state Constitution specifically to prohibit same-sex unions.⁷⁹ Same-sex families, even when legally sanctioned by state authority in a specific location, will be subjected to scrutiny and denied rights and benefits if they decided

⁷³ *Id.*

⁷⁴ ICCPR, *supra* note 13, at art. 10.

⁷⁵ Liliana Alcántara, *Pierde el trabajo y la libertad por ser gay*, EL UNIVERSAL, Dec. 23, 2009.

⁷⁶ ICCPR, *supra* note 13, at art. 17.

⁷⁷ International Gay and Lesbian Human Right Commission, *Mexico: Mexico City Amends Civil Code to Include Transgender rights*, June 15, 2004, available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/511.html>.

⁷⁸ *Id.*

⁷⁹ Leonardo Bastida Aguilar, *Aprueban leyes contra uniones de personas del mismo sexo y antiaborto en Yucatán*, NOTIESE, July 16, 2009.

to travel to another state from the one that sanctions and recognizes their marriage. This constitutes an intrusive and arbitrary interference with family life of legally married same sex couples, contravening the principle enshrined by article 17 and the prohibition of discrimination of articles 2 and 26.

Article 24 (Special Protection of Children)

Article 24 of the ICCPR establishes special protection for the rights of minors, without discrimination on the basis of race, color, sex, etc. In those cases where LGBTI minors are discriminated against or otherwise have their rights violated, Article 24 is violated as well.

The case of the two young lesbian women who were prevented from attending classes and who faced harassment and abuse because of their sexual orientation constitutes a violation of the special protection of children. The discrimination against and alienation of transgendered children in the school system violates these children's right to education.

In 2006, in the state of Jalisco, eight years old child Rosa Isela J.H. was removed from Alondra Avila Velez, a 38 years old transgender woman who had the child in custody since her birth. The child had been abandoned by her own biological mother after birth, and given into custody to Alondra whose partner was at the time the brother of Rosa's biological mother. After 8 years, on May 2nd, 2006, the child was removed by the DIF Jalisco (the state office of the Agency on family issues, the *Sistema para el Desarrollo Integral de la Familia*) and, with the intervention of the Office of the State Prosecutor, given into custody of another agency, the Consejo Estatal de Familia (State Family Council) where Alondra could visit the child once a month.

On October 28th 2008 the VII section of the Family Court ordered that the child should be returned into Alondra's custody. The State Family Council refused to comply with the judges' decision, arguing alleging the lack of "moral character" of the transgender woman, and moved her to an unknown place. Up to now, the child has not been reunited with her mother Alondra⁸⁰. The practice of the state agencies in this case, in violation of the court decision, does not take into account the best interest of the child and violate her right under article 24 of the ICCPR.

In some Mexican states, adoption by same-sex couples is prohibited by law. For example, in Hidalgo state, laws are in place to prevent same-sex couples from adopting, and Judge Jorge Antonio Torres Regnier of the Second Superior Civil and Family Chamber of Justice has stated that "if a gay couple came to Hidalgo to adopt, they would get a 'no'".⁸¹ The recent law legalizing same-sex marriage in Mexico City also includes the right to adopt children. The best interests of children legally adopted by same-sex couples or through step parent adoption in Mexico City could be affected if such families were to move to an area which does not recognize same-sex families, affecting the rights of children living in those families.

⁸⁰ Email communication with a Mexican activist, sent on March 4th, 2010, on file with Global Rights.

⁸¹ José Luis Rico, *Gays no podrán adoptar en Hidalgo*, EL SOL DE HIDALGO, Jan. 10, 2010.

Concluding Notes

- Mexico has provided increasing protection for LGBT individuals. Troublingly, however, most of the country lags far behind Mexico City in recognition of LGBT rights. The protections given to LGBT individuals in Mexico City—including the ability to change the name and gender on identity documents—should be expanded to reach LGBT persons throughout Mexico.
- Greater protection of transgender rights is still needed. Anti-discrimination laws should be amended to include gender identity as a protected category, as transgender people face discrimination in the work force and education system.
- Individuals are vulnerable to hate crimes on grounds of their sexual orientation and gender identity, including hate-motivated killings. The existing hate crimes legislation should be given effect in Mexico City, and similar legislation should be passed on a national level. Murders of LGBT persons should be investigated as hate crimes and not just as “crimes of passion”.
- Sex workers, especially transgender/transsexual/travesti sex workers, are particularly vulnerable to abuse and extortion on the part of state officials and other individuals encouraged by the culture of impunity for crimes against this population. Greater protection must be afforded to sex workers, and police and military personnel must cease arbitrary detentions, extortion, and abuse of sex workers.
- LGBT persons are especially vulnerable in the education system. Both teachers and students have faced discrimination on grounds of their sexual orientation or gender identity in the public school system.

Proposed Questions for the Government Delegation

- Why has the Government failed to mention any issues regarding discrimination, killings and other ill treatments, also by state actors, against individuals on grounds of their sexual orientation and gender identity in its state party report?
- How does the government intend to address the problem of inadequate investigation by police into the murders and other ill treatments of individuals on grounds of their sexual orientation and gender identity?
- How does the government plan to ensure that sex workers, especially travesti and transgender sex workers are free from police violence and intimidation?
- How does the government plan to ensure that one of the most vulnerable segments of Mexico's population, LGBT minors, are adequately protected against discrimination when exercising their right to education, especially in the public school system?
- Given the steps already undertaken with federal antidiscrimination legislation, how does the government plan to deal with evidence of widespread discrimination on grounds of sexual orientation and gender identity, most likely caused by the entrenched conservatism in Mexican society?
- What steps will the government take to ensure that the right of same-sex families will be respected throughout Mexico?