

Asociación Para Una Vida Mejor - Apuvimeh



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM

Discrimination based on sexual orientation and gender identity in HONDURAS

Suggested list of issues to be submitted to the Working Group on the Honduras review

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Civil society organizations APUVIMEH (Association for a Better Life), Akahatá - Working Team on Sexualities and Genders, and Heartland Alliance for Human Needs and Human Rights submit this report for the consideration of the Working Group on Honduras under the United Nations Human Rights Committee to be taken into account when drafting the List of Issues prior to reviewing Honduras' implementation of the International Covenant on Civil and Political Rights (ICCPR).

Legal protection and public policies against discrimination based on sexual orientation and gender identity (Articles 2 and 26 of the ICCPR)

In Honduras, discrimination based on sexual orientation and gender identity is forbidden by Articles 321 and 321-A of the current Penal Code.¹ This is the product of a recent reform as the law earlier prohibited only discrimination on the basis of sex but not explicitly on sexual orientation and gender identity.

However, a new Penal Code is being debated and there is no certainty that legislators will keep these protections in the Code.

Honduras also has a Public Policy and a National Plan of Action on Human Rights (PNADH in Spanish) sanctioned during the administration of former President Porfirio Lobo that includes a chapter on Sexual Diversity. However, strategic actions for this population have been weak and limited even though the Plan includes actions to harmonize domestic legislation with international standards and actions against discrimination by public officers and broader society. Domestic legislation in this area is very scarce.

A high level of discrimination persists on the part of public servants in state institutions, particularly in the National Register of Persons (RNP in Spanish) and the National Institute on Migration (INM in Spanish) in which trans persons have repeatedly been mistreated when renewing their identity documents or having a passport issued: they are forced to change their physical appearance to

¹ **Article 321.** Anyone who, arbitrarily and illegally, obstructs, restricts, diminishes, impedes or annuls the exercise of individual and collective rights or denies the provision of a professional service on the basis of gender, age, sexual orientation, gender identity, party affiliation or political opinion, civil status, an Indigenous or Afro-descendant identity, language, nationality, religion, family status, economic or social condition, disability, health status, physical appearance or on any other grounds attacking the human dignity of the victim will be punished with 3 (three) to 5 (five) years of prison and a fine of 4 (four) to 7 (seven) minimum wages. The punishment will be increased by 1/3 (one third) when: 1) The deed is committed with violence; 2) The deed is committed by a public officer performing her/his function; and 3) There is re-incidence. The public officer will also be sanctioned with being barred from public office for a period that doubles the prison term assigned to this offense.

Article 321-A. Anyone who publicly or through the media or any other public means incites discrimination, hatred, despise, persecution or any other form of violence or attack against a person, group or association, foundation, societies, corporations, non-governmental organizations, *on any of the grounds listed in the previous article* will be imposed a punishment of 3 (three) to 5 (five) years of imprisonment and a fine of 50,000 to 300,000 Lempiras (fifty thousand to three hundred thousand). This punishment will be applied without prejudicing administrative measures applied to the relevant communications media by the State regulating bodies. The same punishment will be applied when the guilty party engages in the deed in the course of her/his professional activities or when providing public services.
Reformed by Decree 23-2013 (Feb.25, 2013) published in the Official Gazette on April 6, 2013. In force from April 6, 2013.

make it consistent with the sex in their documents, thus violating their gender identity and expression.

These actions explicitly contradict the dispositions in Article 321 of the Penal Code and must be adequately punished.

In Honduras there are different public policies for vulnerable groups but the LGTBI population continues to be excluded from national and local plans, projects, programmes and budgets. This translates into a large percentage of LGBTI people being excluded from educational or labour programmes and forced to perform jobs that place their health and lives at risk, forced to migrate for economic reasons but also due to the generalized lack of safety and the prevailing discrimination based on their sexual orientation and gender identity. Currently, a significant number of LGTBI persons are migrating illegally for these reasons.

Even though some progress has been made in the promotion and defense of human rights in Honduras, it is still minimum and visibly shows a lack of political will by decision-makers in the country who, guided by moralistic biases, render the LGTBI population invisible.

It is worth mentioning that even though the Country Vision and National Plan, the Public Policy and National Plan of Action on Human Rights (PNADH) and the Alliance Plan for Prosperity are all in place, these instruments render invisible many of the needs and priorities for LGTBI rights. It is worth mentioning that even though Honduras has received recommendations in this regard during the Universal Periodic Review, they have not been implemented or given visibility.²

The Committee on Economic, Social and Cultural Rights examined Honduras during its 58th session (June 8-9, 2016) and in its Concluding Observations recommended that Honduras

Removes from its legal framework every norm likely to discriminate on the grounds of sexual orientation or gender identity and to impede the full enjoyment of their economic, social and cultural rights by lesbians, gays, bisexual and transgender persons (Paragraph 22.b)³

Right to life (Article 6 of the ICCPR)

This is a highly violated right for society as a whole and for the LGTBI community in particular. LGTBI organizations have documented more than 200 cases of violent death of LGTBI persons in the period 2004-2016. These murders have been motivated by homo-lesbo-transphobic bias and executed with cruelty. These include strangling, burning, torture and cruel treatment prior to the murder. The Prosecutor's Office continues to be extremely slow in forensically investigating and

² Honduras went to the Second Cycle of its Universal Periodic Review (UPR) before the UN Human Rights Council on May 8, 2015. It accepted a recommendation from Colombia by which it committed itself to "Continue with the effective implementation of measures to combat discrimination and violence based on sexual orientation and gender identity, particularly through implementing differentiated approaches to guarantee that lesbians, gays, bisexual, transgender and intersex persons can exercise their rights".

³ UN Committee on Economic, Social and Cultural Rights, E/C.12/HND/CO/2, June 24, 2016. Unofficial translation by the authors of this report as no official translation into English is yet available.

bringing these cases to justice. Only about 45 of these cases have been prosecuted across the country and the number of those condemned is very limited.

Right to personal liberty and security (Article 9 of the ICCPR); rights of persons deprived of their freedom (Article 10 of the ICCPR).

LGBTI people's personal freedom and security depends on their living underground to avoid being discriminated and victimized by society.

When trans persons are deprived of their freedom or when they go to visit relatives or friends in prison, they routinely suffer abuses on the part of other inmates without the prison authorities intervening and putting an end to these abuses. During visiting days, prison authorities refuse or impede entry for trans visitors forcing them to change clothes (into those of their legal sex/gender) or cut their hair in order to be able to visit their relatives or friends in prison.

These actions explicitly contradict the dispositions in Article 321 of the Penal Code and must be adequately punished.

Guarantees of due process (Articles 14-16 of the ICCPR)

To enjoy due process guarantees, an LGTBI person must refrain from openly expressing his/her sexual orientation or gender identity because the prevailing stigma against LGTBI persons informs judicial decisions that motivated by bias annul basic guarantees, particularly when public servants ignore or disregard LGTBI issues.

The lack of domestic legislation on gender identity, measures, rules and protocols against discrimination, significantly contributes to the ongoing violation of fundamental human rights guarantees on the part of the Honduras State. But the key factor is the existence of laws that are not in harmony with international standards on human rights protection, like the Police and Citizens Coexistence Law that allows security forces free rein when dealing with cases in which LGTBI persons are involved.

Right to freedom of religion and belief (Article 18 of the ICCPR)

Even though it is guaranteed by the Honduras Constitution, freedom of religion and belief is clearly violated when in the passing of laws or issuing of judicial verdicts that should be guided by the law, public officers, legislators and justice personnel are unable to put aside their individual religious beliefs. This affects those who do not follow the majority religions or have no religious belief at all. In spite of Honduras being considered a secular state, there is a significant Evangelical and Catholic

influence on government decisions. For instance, when Articles 112 and 116⁴ from the Constitutions were reformed, heterosexual marriage was consecrated as the only valid one with adoption forbidden for same-sex couples.

Freedom of expression, assembly and association (Articles 19, 21 and 22 of the ICCPR)

For LGBTI persons, freedom of assembly, association and expression are equally conditioned to their not openly departing from heteronormative patterns. An LGBTI organization that wants to be legally registered in Honduras is forced to avoid openly declaring itself as such and forced to take into account the fundamentalist and moralistic views of decision-makers so its Statutes will be approved.

To openly express your sexual orientation or gender identity in Honduras, you need to strengthen yourself because it implies being constantly exposed to expressions of hatred and violence and to the reality that sometimes being openly lesbian, gay, bisexual or trans in Honduras can put your life at risk.

Several LGBTI organizations have suffered physical attacks, persecution, and intimidation of their volunteers and technical staff and have had to request precautionary measures from the Inter-American Commission on Human Rights (IACHR⁵). Far from protecting these organizations, the State has not fulfilled or has fulfilled to a minimum extent, the dispositions of the precautionary measures citing weak excuses, particularly the lack of budget.

When LGBTI organizations report robberies taking place in their premises and persecution of their collectives, protection and investigation mechanisms have been ineffective because even when the organizations provided adequate information and support, investigative bodies have not acted. This places victims at an even higher risk.

In its recent review of Honduras mentioned above, the UN Committee on Economic, Social and Cultural Rights also included recommendations on human rights defenders that apply to those advocating for the rights of the LGBT collective⁶.

Protection of the family (Article 23 of the ICCPR), Rights of children (Article 24 of the ICCPR)

As stated earlier, the Constitution of Honduras explicitly forbids all forms of recognition, even as de-facto unions, for same-sex couples and their families, including girls, boys and adolescents (Articles

⁴ Article 112: The right to marry each other and legal equality for the spouses is recognized for men and women who have the quality of such in a natural way.... De-facto unions among those capable of entering into a marriage are also recognized. Marriage and de-facto unions among persons of the same sex are prohibited. Marriages or de-facto unions among persons of the same sex celebrated in or recognized by other countries will have no validity in Honduras.

Article 116: The right to adopt is recognized for those who are married or in a de-facto union. It is forbidden to give boys or girls in adoption to those in same-sex marriages or de-facto unions.

⁵ A complete list of these measures, including PM 457/13 in favour of APUVIMEH, can be found at <http://www.oas.org/es/cidh/lgtbi/proteccion/cautelares.asp>

⁶ UN Committee on Economic, Social and Cultural Rights, E/C.12/HND/CO/2, June 24, 2016, Para. 10.

112 and 116). If the legal parent of such children dies, their other parent will not be able to care for them because the law does not recognize her/his status. The parent that is not recognized as such by the law is also unable to travel abroad alone with her/his children, leave them a legacy or register them for her/his health insurance even if she/he is the only person having such insurance in the family. All this deprives children in those families of the protection required by their status as minors as the Covenant indicates and creates an unfair and unjustified discrimination between them and the children of heterosexual couples (married or in de-facto unions).

Right to political participation (Article 25 of the ICCPR)

Political rights and participation in political spaces are very restricted for the trans community and only accessed if they give in to pressure to not express their gender publicly. Even though discrimination based on sexual orientation and gender identity is legally forbidden, the judicial system does not provide timely and effective responses when these violations are reported. This was the case of trans women who tried to run for elected positions in Honduras' party primaries. Religious leaders who are highly influential in public administration incited hatred encouraging their parishioners to not vote for these candidates only because of their gender identity.

These actions explicitly contradict the dispositions in Article 321 of the Penal Code and must be adequately punished.

Suggested questions

Based on what this reports outlines, we suggest the following questions for the Committee to submit to Honduras in preparation for the review on its implementation of the International Covenant on Civil and Political Rights.

1. What concrete measures is Honduras planning to take to implement protections against discrimination based on sexual orientation and gender identity (Articles 321 and 321-A of the Penal Code) in specific areas such as health, work, education and housing among others?
2. What concrete measures is Honduras planning to take to sensitize and train those working for the State, including security personnel, so they can act in accordance with the anti-discriminatory protections based on sexual orientation and gender identity in the country's legislation (Articles 321 and 321-A of the Penal Code)?
3. Yogyakarta Principles encompass both civil and political and economic, social and cultural rights while also showing how sexual rights and gender equality are intrinsically connected to the whole spectrum of human rights. They also contain recommendations for States on how to stop abuse and discrimination. How does the Honduras Public Policy and National Plan of Action on Human Rights - that includes a chapter on sexual diversity - make it possible for these principles to become legally binding for Honduras?

4. In its chapter on sexual diversity, the National Plan of Action on Human Rights includes different impact outcomes and process indicators⁷ that constitute a public policy for Honduras. Could the State report on the status in achieving these outcomes?

5. What concrete measures is Honduras planning to take to adequately investigate the murders of lesbian, gay, bisexual and trans persons and activists, punish those responsible and provide effective remedies to the victims' families and communities?

6. What concrete measures will the State of Honduras implement to protect lesbian, gays, bisexual and transgender human rights defenders?

7. Honduras currently has discriminatory legislation affecting same-sex couples and their families, including girls and boys (Articles 112 and 116 of the Honduras Constitution). What measures is Honduras planning to take to bring these laws in line with international standards, implementing the recommendations of United Nations bodies such as the Committee on Economic, Social and Cultural Rights?

⁷ See Annex I

ANNEX I

National Plan of Action on Human Rights - Sexual Diversity Chapter

Impact Outcome: The national plan is executed and implemented on the basis of respect, protection and effectiveness for the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.

Outcome 1: National legislation to promote and protect the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one is analyzed and incorporated.

Outcome 2: A human rights curricula focused on equality and non-discrimination is implemented throughout the education system.

Outcome 3: Human rights of the for the population with a sexual orientation and gender diversity that differs from the heterosexual one are incorporated as a cross-cutting theme in each of the actions of the State Secretaries in Honduras.

Impact Indicators:

1. Actions and strategies implemented by State Secretaries for the population with a sexual orientation and gender diversity that differs from the heterosexual one.
2. Citizenship, human rights, sexual orientation and gender identity program for State officers developed and implemented.

Indicators

1. Existence and scope of laws in favour of the population with a sexual orientation and gender diversity that differs from the heterosexual one.
2. Date of promulgation and of entry into force of national laws to promote and protect the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.
3. International human rights instruments related to respecting, guaranteeing and make effective the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.
4. Date of entry into force of the Education, Health and Labour plan to respect, guarantee and make effective the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.
5. Date of entry into force of the Special Care Protocol for the Sexual Diversity Population Living with HIV/AIDS granting patient's confidentiality.
6. Percentage of State secretaries effectively implementing their mandates with a human rights approach adjusted to international standards.

7. Number of programmes and actions for the population with a sexual orientation and gender diversity that differs from the heterosexual one

8. Number of research and diagnoses on human rights violations suffered by the population with a sexual orientation and gender diversity that differs from the heterosexual one.

9. Number of analytical studies on national legislation and illegal use of force by government agents against the population with a sexual orientation and gender diversity that differs from the heterosexual one.

10. Number of training and sensitization programmes on respecting, guaranteeing and making effective the rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one implemented.

11. Number of VICITS clinics created and strengthened.

12. Number of agreements signed at the regional and Latin American level for respecting, guaranteeing and making effective the rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.

13. Human Rights Directorate for respecting, guaranteeing and making effective the rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one created and at work.

14. Number of complaints received in relation to Honduran authorities tried for violating the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.

15. Number of sensitization and awareness campaigns for respecting, guaranteeing and making effective the rights for the population with a sexual orientation and gender diversity that differs from the heterosexual one implemented.

16. Percentage of public officers trained on human rights, sexual orientation and gender identity.

17. Number of reports on progress in adopting the recommendations of international bodies

...

20. Percentage of the population with a sexual orientation and gender diversity that differs from the heterosexual one having greater access to basic services.

21. Number of teaching materials designed and published to promote respect, protection and effectiveness in regard to the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.

22. Number of spaces free of charge in media granted to encourage respect, protection and effectiveness in regard to the human rights of the population with a sexual orientation and gender diversity that differs from the heterosexual one.

23. Human rights curricula focused on equality and non-discrimination designed and implemented in the educational system.

24. A special unit at the National Investigation Directorate and Public Attorney Office for guaranteeing timely, adequate and transparent investigation on murders, intimidation and other abuses of the LGBT community created and working.

25. Number of analyses to monitor and report on human rights violations suffered by the population with a sexual orientation and gender diversity that differs from the heterosexual one conducted.

26. A program for citizens' protection and political asylum abroad for citizens whose lives and personal integrity are at risk because of their sexual orientation and gender identity implemented.