



## **Report of the Situation of the Human Rights of Lesbian, Gay, Bisexual and Transgender (LGBT) Community in Mexico.**

### **Asistencia Legal por los Derechos Humanos**

*Asistencia Legal por los Derechos Humanos*, is a nongovernmental organization that works to defend, promote and expand the human rights of groups in situations of vulnerability with special emphasis in women, indigenous people, and LGBT persons deprived of liberty in the Penitentiary System.

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## Report of the Situation of the Human Rights of Lesbian, Gay, Bisexual and Transgender (LGBT) Community

The homophobic behaviors are normalized inside Mexican society. The factors that cause them are related with the culture and frequently provoke violations of the Human Rights (HR) of the LGBT community. Homophobic actions are not only validated by the State actors but adopted by entire institutions and recognized by some laws.

- Mexico is the second country with the biggest number of hate crimes caused by homophobia in Latin America. From 1995 to 2008 there have been 628 murders caused by this problem<sup>1</sup>. Civil society organizations estimate that for each murder that is registered there are other two that have not been identified. According to this estimation, the actual number of murders caused by homophobia in the mentioned period is 1884.
- In 2010 the Human Rights Committee highlighted this situation and recommended to the Mexican State the adoption of immediate actions in order to efficiently investigate the denounces related with violence against LGBT people. Even though, the hate crimes caused by homophobia are still not typified in the Federal Criminal Law and there is no mechanism available to investigate them<sup>2</sup>.
- The authorities and public servers pointed as probably responsible of Human Rights Violations against LGBT people are, principally, the security corps. These violations were arbitrary detentions, injuries, threats, robbery, extortion, burglary and excessive use of police force<sup>3</sup>.
- The second group of public servers pointed as probably responsible of these violations are the authorities of the detention centers. The violations are related with the denial to the access of particular zones designed for LGBT population deprived of liberty<sup>4</sup>. There are also reports of abuses by the custodial staff and deficiencies in the medical care.

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1 Letra S Sida, Cultura y Vida Cotidiana A.C. Relación de Crímenes por Homofobia (2008). <http://www.letraese.org.mx/wp-content/uploads/2010/05/Informe.pdf>

2 Código Penal Federal. México, Distrito Federal. 14 de marzo de 2014. <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>

3 Comisión Nacional de los Derechos Humanos. Informe Especial de la Comisión Nacional de los Derechos Humanos sobre Violaciones a los Derechos Humanos y Delitos Cometidos por Homofobia. (2010) [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2010\\_homofobia.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2010_homofobia.pdf)

4 Asistencia Legal por los Derechos Humanos, A.C. Personas Privadas de la Libertad de la Comunidad LGBTTTI. ¿Comunidad LGBTTTI sin Derechos? (2010) <http://dl.dropboxusercontent.com/u/79437401/Publicaciones%20ASILEGAL/Personas%20privadas%20de%20la%20libertad%20de%20la%20comunidad%20LGBTTTI.pdf>

- The Public Ministry agencies are the third group of authorities reported as probably responsible of HR violations against LGBT community. There are reports of despotic treatment, discrimination and irregularities in the investigations of crimes as well as the denial of the beginning of inquiries for denounced crimes.
- Civil society organizations have proved that the personal responsible of the security and health of the people in detention centers deny in an explicit and systematic way the primary care for LGBT community<sup>5</sup>. The arbitrary cancelation of these services is a violation of the no-discrimination principle.
- The Mexican State does not recognize the juridical identity of transgender people. There is no process available to facilitate the concordance of the gender identity with the gender that is recognized by the official documents. In march, 2007 an initiative to create the Federal Law against the discrimination of transgender people was presented in order to protect the right of every person to be recognized and treated according to their gender identity. The identity aimed to favor the free development of the personality of trans people, the respect to their dignity and the access to the required health services. This initiative did not progress and the lack of recognition of trans people's juridical identities has not been fulfilled yet<sup>6</sup>.
- In 2006 it was presented an initiative to reform the Law of the Institute of Social Security and Social Services, the Law of the Institute of Social Security of the Mexican Army, the Federal Labor Law and the General Law for Health in order to achieve legal recognition for the same sex marriages. This initiative<sup>7</sup> did not progress. Even when, in some states, there is recognition for this couples, the Mexican Government has not have recognized to them the same rights that it recognizes for heterosexual marriages.
- The Mexican Institute for Social Security has been recently obligated, by the Supreme Court, to recognize the same sex marriages and to provide to them the same benefits that it provides for heterosexual marriages. Even though, the Institute's governing law has not been modified to make it inclusive.

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5 Asistencia Legal por los Derechos Humanos, A.C. Personas Privadas de la Libertad de la Comunidad LGBTTTTI. ¿Comunidad LGBTTTTI sin Derechos? (2010) <http://dl.dropboxusercontent.com/u/79437401/Publicaciones%20ASILEGAL/Personas%20privadas%20de%20la%20libertad%20de%20la%20comunidad%20LGBTTTTI.pdf>

6 Secretaría Técnica del Comité Coordinador para la elaboración del Diagnóstico y Programa de Derechos Humanos del Distrito Federal; Dirección de Difusión y Publicaciones de la Comisión de Derechos Humanos del Distrito Federal. Diagnóstico de Derechos Humanos del Distrito Federal. (2008) [http://www.hchr.org.mx/files/doctos/Libros/Libro\\_DiagnosticoDHDFp1.pdf](http://www.hchr.org.mx/files/doctos/Libros/Libro_DiagnosticoDHDFp1.pdf)

7 Secretaría Técnica del Comité Coordinador para la elaboración del Diagnóstico y Programa de Derechos Humanos del Distrito Federal; Dirección de Difusión y Publicaciones de la Comisión de Derechos Humanos del Distrito Federal. Diagnóstico de Derechos Humanos del Distrito Federal. (2008) [http://www.hchr.org.mx/files/doctos/Libros/Libro\\_DiagnosticoDHDFp1.pdf](http://www.hchr.org.mx/files/doctos/Libros/Libro_DiagnosticoDHDFp1.pdf)

- Even when the Political Constitution of the Mexican United States protects the right to not be discriminated because of the sexual preferences, this does not include in an explicit way the right to not be discriminated because of the sexual orientation, the gender identity and the gender expression.
- One of the principal violations to HR that LGBT community suffers is the discrimination caused by the intolerance against their sexual orientation, gender identity or gender expression<sup>8</sup>. This is still happening even when the Federal Law to Prevent and Eliminate Discrimination was adopted in 2003.

### Proposed Questions

- What is the Mexican State doing to protect the Right to Life (Art. 6) of LGBT people and to investigate the hate crimes that are committed against them?
- What measures has the Mexican State taken to protect the Human Rights of LGBT people deprived of liberty in detention centers (Art. 10) and to stop the abuses that the authorities commit against them in this centers?
- What is the Mexican State doing to achieve the full recognition of the juridical identity (Art. 16) of trans people?
- What mechanisms has the Mexican State implemented to prevent and investigate the arbitrary detentions (Art. 17) that occur against LGBT people?
- The Mexican State rejected this year, during the Universal Periodical Review, a recommendation emitted by the Vatican that demanded “to preserve the natural institution of family and the marriage as the conjugal union between a man and a woman”. What are the measures that the legislative power has taken in order to recognize the marriages formed by same sex couples, coherently with the rejection of this recommendation?
- What measures is the Mexican State going to take in order to harmonize the Supreme Court's ruling (January 29th 2014) in which the Law of the Institute of Social Security is interpreted and it is established that “even when the Law makes differences based on gender, it has to be understood as inclusive of same sex couples, fact that will preserve the *pro persona* principle, established in the Constitution”.
- What mechanisms have been implemented to achieve the full application of the Federal Law to Prevent and Eliminate Discrimination (Art. 26)?

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8 Comisión Nacional de los Derechos Humanos. Informe Especial de la Comisión Nacional de los Derechos Humanos sobre Violaciones a los Derechos Humanos y Delitos Cometidos por Homofobia. (2010)  
[http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2010\\_homofobia.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2010_homofobia.pdf)