

RECOMENDATIONS

Lesbians –like all human beings- must enjoy their basic rights freely, fairly and fully. In order to ensure that they are no longer second-class citizens in Costa Rica, IGLHRC and CIPAC/DDHH make the following recommendations to the Costa Rican state and their government:

- As a country that has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW), the Costa Rican state should fully harmonize its legislation, policy, and practice with the provision of those treaties.

Concrete examples would include the following:

- To add “sexual orientation” to those categories protected against discrimination by Article 373 of the Penal Code. The Costa Rican State should review its anti-discriminatory legislation to ensure that it offers comprehensive protections against unequal treatment based on sexual orientation. These protections should involve all areas of life, including but not restricted to housing, employment, and the family; they should protect against unequal treatment by non-state actors as well as the state.
- To amend the language of Article 380 of the Penal Code in such a way that it becomes less ambiguous and non-discriminatory. For instance, if the intention is to punish those who “practice sex in public”, a definition of “sex” (or “sexual relationship”) must be included in the text. This type of provision is more likely to be enforced in a non-discriminatory way if the law refers to well described “acts” and not to their qualities (like “in a scandalous way”), as the later provides ample opportunities for discriminatory enforcement.
- On the same line, to amend Article 23 of Law # 218 (regarding associations), that allows authorities to close an association’s venue if “... in that location there occur illicit acts, immoral or indecent behavior, or disorderly conduct...” Again, those ambiguous terms should be replaced by a clear description of acts that will not be allowed to take place in the venues. State restrictions on the registration and legal recognition of Non Governmental Organizations (NGOs) should be the minimum necessary to establish financial and legal accountability, and procedures for such recognition should be both speedy and fair. The Costa Rican State should not discriminate in any way based on the gender or sexual orientation of the organization’s members, or on the groups, identities or status toward which its purpose might be directed.

- To eliminate the reference to “homosexuality” in Article 98.6 and 102 of the Penal Code, that state the obligation of the judge to impose a security measure consisting in “prohibition to visit certain places” when “prostitution, homosexuality, drug addiction or alcoholism are habitual and have caused the criminal conduct of the accused.”
 - To amend Article 242 of the Penal Code to eliminate all references to gender for those entering a “de facto union”, as a way to open the possibility of recognition for same-sex couples. Restricting the enjoyment of fundamental social and economic rights to only one type of family violates the principles of non-discrimination and equality that the ICESCR consecrates.
 - Once that discriminatory provision is amended, to pass legislation that recognizes de facto unions between two people of the same sex, and to grant them the same rights that are currently enjoyed by heterosexual de facto partners.
- The Costa Rican State should enact legislation and policy implementing all provisions of the 4th UN Conference on Women’s Platform for Action (Beijing, 1995), including those provisions regarding women’s sexual rights and freedom⁵².
 - The Costa Rican State should name and identify as such all human rights violations, which are based on sexual orientation. It should create mechanisms for statistically recording acts of violence, as well as recognizing the specific forms of hatred, which give raise to them.
 - The Costa Rican State should ensure that full support is available – including all necessary legal and social services- to women who are vulnerable to, or victims of, discrimination or violence due to their sexual orientation.
 - The Costa Rican State should attend to its responsibilities to promote human rights, by creating a culture of respect for diversity and equality. It should ensure that its educational system at every level, as well as state media and all other systems for dissemination of knowledge, promote understanding of human rights. Issues of gender and sexual orientation should be integral to this education, and framed so as to clearly condemn intolerance while promoting equality and respect for the rights of all peoples.
 - As an integral part of human rights education, the Costa Rican state should educate all persons in sexual rights so that they can decide and act in relation

⁵² *The following recommendations have been adapted from Written Out. How Sexuality is Used to Attack Women’s Organizing, a report written by IGLHRC, Human Rights Watch and the Center for Women’s Global Leadership (San Francisco, 2000).*

to their sexual conduct and expression, take responsibility for their sexual behavior and its consequences, enjoy sexual health and a safe and satisfying sexual life.

- The Costa Rican State should ensure that all religious bodies represented in the national community have equal roles and voices in policy-making, and that these are no greater or more influential than the roles and voices allotted to secular organizations from civil society. Reviewing the differential role assigned to the Catholic religion by Article 75 of the National Constitution would be significant step in this direction.

- The Costa Rican State should hold fully accountable any state employees or agents, as well as non-state actors, who harass, persecute, pursue or violate the rights of persons because of their gender or sexual orientation. Personnel of every state agency, from the criminal justice system to providers of social services, should be trained and sensitized in issues of gender and sexual orientation.