



THE VIOLATION OF THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS IN EL SALVADOR

Shadow Report submitted to the United Nations Human Rights Committee

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HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS IN EL SALVADOR

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INTRODUCTION

1. This shadow report is the product of a joint endeavour by the following organizations: *Asociación Salvadoreña de Derechos Humanos “Entre Amigos”* (Salvadorean Human Rights Association, “Between Friends”), International Gay and Lesbian Human Rights Commission (IGLHRC), Global Rights, International Human Rights Clinic of the Harvard Law School (HLS) Human Rights Program, y *Red Latinoamericana y del Caribe de Personas Trans* (Red LACTRANS, Latin American and Caribbean Network of Trans Persons)¹. The purpose of this document is to provide relevant information on the human rights situation of lesbian, gay, bisexual and trans² persons in El Salvador to the United Nations Human Rights Committee, as a way of complementing and/or clarifying the data submitted by the Salvadorean State through its Sixth Periodical Report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR).

2. This document covers events that took place in El Salvador between 2004 and the present time. The information it contains was provided mainly by *Asociacion “Entre Amigos”*, through its founder and Director William Hernandez and by Red LACTRANS, through its representative Marcela Romero. Additional data was collected through media clips, internal legislation and documents produced by other non-governmental organizations.

3. However, the cases mentioned in this report do not exhaust the human rights violations against persons of a non-conforming sexual orientation or gender identity in El Salvador. According to William Hernandez, during some periods and in particular during the year 2006 (*infra* para. 29), the “work of documenting and denouncing has been affected by the lack of technical and financial resources”. Moreover, many cases are neither published by the media, nor reported by the victims and/or their families and involve persons who have not publicly acknowledged their sexual orientation³. This situation is even more serious in the case of lesbian women, most of whom “do not report physical, verbal, psychological, religious and work-related violence they suffer, because they are afraid and they live hiding (their sexual orientation) from their families or at work”⁴.

4. In the last section of the report, the undersigned organizations submit a summary of the relevant domestic legislation, State actions and substantive human rights violations of persons of a non-conforming sexual orientation or gender identity that were mentioned in this document.

A. SIXTH PERIODIC REPORT SUBMITTED BY THE STATE

¹ This report was drafted by Ana Luisa Gomes Lima (candidate, LLM 2011, HLS), under the supervision of Professor Mindy Jane Roseman (J.D., PhD, HLS), with the support of Stefano Fabeni (Global Rights) and Marcelo Ferreyra (IGLHRC).

² In this report, the word “trans” refers to all persons who self-define as transsexuals, transgender or *travestis*.

³ Written statement by William Hernandez, April 22, 2009.

⁴ *Id.*

5. El Salvador ratified the ICCPR on November 30, 1979, and has submitted six periodic reports to the HRC. According to the Concluding Observations on the Third, Fourth and Fifth Periodic Reports submitted by El Salvador,

16. The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local “contravention orders”) used to discriminate against people on account of their sexual orientation (art. 26).

The State Party should provide effective protection against violence and discrimination based on sexual orientation.

[...]

22. In accordance with rule 70, paragraph 5, of the Committee’s rules of procedure, the State Party should provide information on the recommendations given in paragraphs 7, 8, 12, 13 and 18 within one year. **The Committee requests the State Party to provide in its next periodic report information on the other recommendations made in these concluding observations regarding the implementation of the Covenant.**⁵ (Bold ours)

6. In spite of the above, El Salvador submitted its Sixth Periodic Report to the HRC in January 2009 without providing any information with regard to the situation of those having a non-conforming sexual orientation or gender identity. In general, the State affirmed that i) the Republic’s Constitution “consecrates the principle of equality for all persons and thus there can be no distinctions based on nationality, race, sex or religion for the enjoyment of their rights”⁶, and ii) the penal law seeks to “punish acts of discrimination among the population, enabling the equitable enjoyment of rights without any restriction based on race, colour, sex, religion, political belief or any other social status”⁷. However, none of the laws mentioned by the State deals specifically with discrimination based on sexual orientation, gender identity or gender expression.

B. SUBSTANTIVE VIOLATIONS

ARTICLES 2 AND 26 (NON-DISCRIMINATION)⁸

⁵ Human Rights Committee, Concluding Observations to the Third, Fourth and Fifth El Salvador Periodic Reports, CCPR/CO/78/SLV, August 22, 2003, Paras 16 and 22.

⁶ El Salvador, Sixth Periodic Report to the Human Rights Committee, para 20.

⁷ *Id.*, para. 22.

⁸ Article 2

1. 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.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

7. Article 3 of the Constitution of the Republic of El Salvador states that “all persons are equal before the law. No restrictions based on **differences of nationality, race, sex or religion** can be placed for the enjoyment of **civil** rights. No hereditary employment or privileges are recognized”⁹ (bold ours). Likewise, Article 58 of the Constitution prescribes that “no educational facility can refuse to admit a student because of the nature of his parents or tutors’ union, nor of **social, religious, racial or political differences**”¹⁰ (bold ours). As indicated already, the Constitutional text does not mention other grounds on the basis of which discrimination is forbidden, particularly sexual orientation, gender identity and gender expression.

8. The Penal Code defines “Workplace Discrimination” and “Assaults Related to the Right to Equality”:

WORKPLACE DISCRIMINATION. Art. 246.- Whoever causes serious discrimination in the workplace on the basis of sex, pregnancy, origin, marital status, race, social or physical status, religious or political beliefs, affiliation to unions and their agreements or refusal to do so, family links to other workers in the same company, and do not restore the situation of equality before the law after having being requested to do so or subjected to administrative sanctions, compensating for the economic damage his acts could have caused, will be punished with six months to two years of imprisonment.

ASSAULTS RELATED TO THE RIGHT TO EQUALITY. Art. 292 – The public officer, employee or authority that on the basis of nationality, race, sex, religion or **any other status**, deprives a person of any of the individual rights recognized by the Constitution of the Republic, will be punished with one to three years of prison, and suspension of his position or employment for the same period¹¹. (bold ours).

9. Sexual conducts between persons of the same gender are legal in El Salvador. However, the Constitution of the Republic states in its Articles 32 and 33 that “**marriage constitutes the legal basis of the family**, resting on the legal equality between spouses...”¹² and that “the law will regulate personal and patrimonial relationships between spouses and among them and their children, establishing their reciprocal rights and obligations on the basis of equality, and will create the

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 26

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.

⁹ Constitution of the Republic of El Salvador, Article 3. Available at: <http://www.asamblea.gob.sv/Constitucion/ConstitucionVigente1983.aspx> (in Spanish). Consulted on September 28, 2010.

¹⁰ Id., Article 58.

¹¹ El Salvador Penal Code, Articles 246 and 292. Available at: <http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/29961fcd8682863406256d02005a3cd4> (in Spanish). Consulted on September 28, 2010.

¹² Constitution of the Republic, *supra* footnote 9, Articles 32 and 34.

necessary institutions to guarantee its enforcement. It will also regulate the family relationships resulting from **the stable union between a man and a woman**” (bold ours). Likewise, Article 11 of the Family Code defines marriage as “the legal union of **a man and a woman**, to create a full and permanent community of life”¹³. On the basis of this, and according to what the State report affirms¹⁴, same-sex marriage is not possible in El Salvador, nor are de-facto unions between persons of the same sex recognized.

10. With regard to adoption, the Family Code establishes in its Article 166 that “adoption can be granted on a joint or individual basis”. Article 169 of the same Code further clarifies this disposition, by stating that “joint adoption is that decided on the basis of the request by **both spouses and only they can adopt in this way**. If only one spouse is adopting, the adoption is individual. In this case, the adoptee will bear both of the individual adopter’s surnames”. Once again, same-sex couples see a benefit restricted to them, as they are not allowed to adopt a child jointly. In this context, *Asociación “Entre Amigos”* has no knowledge of any case in which lesbian, gay, bisexual or transsexual persons had adopted children¹⁵.

11. In addition, and based on the same concept of family, the Law against Family Violence does not apply to same-sex couples. Article 3 of this law states that “any direct or indirect action or omission causing physical, sexual or psychological harm or death to **family members** is considered family violence” (bold ours)¹⁶.

12. Besides the legal restrictions already in place, in 2003 MP Rodolfo Parker, from the Christian Democrat Party, submitted to the National Assembly a bill for amending the Constitution, with the support of the *Partido de Conciliación Nacional* (National Conciliation Party) and *Alianza Republicana Nacionalista* (Nationalist Republic Alliance, ARENA). The bill proposed the following addition to Article 32: “Marriage between persons of the same sex that have been entered into or recognized by the laws of other countries, and other unions that do not meet the requirements of the Salvadorian legal rule, will have no effect in El Salvador”. Article 33 was also to be amended to end by saying: “The law will also regulate the relationships resulting from a stable union between a man and a woman, so born and who have no impediment to enter into marriage”. Lastly, the amendment would add to Article 34 an explicit prohibition of “adoption by same-sex couples”¹⁷. In 2006, the bill was subjected to its first vote and passed, to be ratified in the period 2007-2009. In April 2009, discussion started leading up to the second vote on the bill, but this time it failed to be ratified¹⁸.

13. In the context of the proposed Constitutional amendment, on July 30, 2006, the Catholic Church and the organization *Red Familia* (Family Network) “launched a signature campaign to demand the Legislative Assembly to ratify legal reforms forbidding same-sex marriage”¹⁹. Also, the Catholic Archbishop of El Salvador was constantly calling lesbian, gay, bisexual or transgender persons “sick” and “perverted”. The Catholic humanitarian agency Caritas, which particularly helps

¹³ El Salvador Family Code, Article 11. Available at: <http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/2282df0f300344f606256d02005a39f9?OpenDocument> (in Spanish). Consulted on September 28, 2010.

¹⁴ El Salvador, *supra* footnote 6, para 214.

¹⁵ Phone interview with William Hernandez, on behalf of *Asociación “Entre Amigos”*, held on September 30, 2010.

¹⁶ El Salvador Law Against Family Violence, Article 3. Available at: <http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/ea93e5a68de3343906256d02005a3a9e?OpenDocument> (in Spanish). Consulted on September 28, 2010.

¹⁷ *Alianza por la Diversidad Sexual LGBT, Sistematización de Hechos de agresión a la comunidad de Lesbianas, Gays, Bisexuales y Trans en El Salvador*, pages 3, 7 and 8.

¹⁸ *Id.*, page 9.

¹⁹ *Id.*, page 9.

homeless persons, emphatically declared that it was not going to help “homosexual persons”, while the Protestant leader, Brother Tobi from the *Iglesia de los Amigos de Israel* (Church of the Friends of Israel), called lesbian, gay, bisexual and transgender persons “dirt” and “garbage”, and stated that parents should expel their gay children from the home because otherwise “God will bring misfortune to them”. That pastor also stated that attacks against gay persons should not be reported to the authorities, because it was God working against that person²⁰.

14. Since 2009, with the change in the Presidency, the State has adopted a more favourable attitude towards LGTBs, without discrimination based on sexual orientation or gender identity, as well as towards the organizations advocating for their rights (*infra* para. 15). On March 5, 2009, the Public Health and Social Welfare Ministry passed Agreement No. 202 to eradicate all forms of discrimination based on sexual orientation in public health services²¹.

15. On May 4, 2010, the Presidency adopted Decree No. 56 that contains dispositions aimed at avoiding all forms of discrimination based on gender identity and/or sexual orientation in public administration²².

16. Also in May 2010, with the support of those organizations advocating for the human rights of persons having a non-normative sexual orientation and/or gender identity, the State created the Sexual Diversity Division, under the Social Inclusion Secretary. The new body has as its goals i) to promote eradication of sexual orientation and gender identity based discrimination; ii) to encourage knowledge about sexual diversity through information, sensitization and the elimination of bias about lesbians, gays, bisexuals, and trans persons; iii) to promote the creation of public policies guaranteeing those basic human, economic, social, civil and political rights that every citizen enjoys to persons with diverse sexuality (lesbian women, gay men, bisexual, transsexual, transgender and *travesti* individuals); and iv) to promote the creation of services and spaces free from homo, lesbo or transphobia, and of any other form of discrimination based on sexual orientation and gender identity, where all persons are treated with the same dignity and respect²³. According to the representative of *Asociacion “Entre Amigos”*, lesbian, gay, bisexual and transgender community activists have been able to talk to State representatives and have been involved in the design and implementation of public policies against discrimination²⁴. With the support of non-governmental organizations, the above mentioned Secretary plans to organize training courses for public health and security

²⁰ Id., page 24; Statement by William Hernandez, *supra* footnote 3; “*El Salvador: New Attacks Underscore Gays’ Dire Situation*” published in *Direland* December 14, 2006. Available at: http://direland.typepad.com/direland/2006/12/el_salvador_new.html. Consulted on September 18, 2010, and “*El Salvador Trans Attacks*” published in *Gay City News* December 7, 2007. Available at http://gaycitynews.com/site/news.cfm?newsid=17563717&BRD=2729&PAG=461&dept_id=569346&xfi=6 (in Spanish). Consulted on September 18, 2010.

²¹ Public Health and Social Welfare Ministry, Agreement No. 202. National Press, Official Gazzette, Volume 383, No. 66, April 14, 2009, p. 40-41. Available at: http://asp.mspas.gob.sv/regulacion/pdf/ley/Acuerdo_202_erradicar_discriminacion_orientacion_sexual.pdf. Consulted on September 28, 2010.

²² Presidential Decree No. 56. National Press, Official Gazzette, Volume 387, No. 86, May 12, 2010, p. 4-6. Available at: <http://imprentanacional.gob.sv/?p=1456>. Consulted on September 28, 2010.

²³ Social Inclusion Secretary, *Principales Funciones de la División de Diversidad Sexual*. Available at: http://inclusion-social.presidencia.gob.sv/index.php?option=com_content&view=article&id=59&Itemid=120&Itemid=126. Consulted on September 29, 2010.

²⁴ Interview with William Hernandez, *supra* footnote 15, and speech by Ana Cisneros, on behalf of the organization “*Alianza por la Diversidad Sexual LGBT*”, during the launch of the Minimum Platform on Sexual Diversity, Social Inclusion Secretary, May 13, 2010. Available at: <http://www.scribd.com/doc/31452844/Discurso-Ana-Cisneros-13-de-mayo-2010-Foro-Inclusion-Social-y-Diversidad-Sexual>. Consulted on September 30, 2010.

personnel on Decree No. 56, Agreement No. 202 and other issues related to the rights of persons with non-conforming sexual orientation and/or gender identities²⁵.

17. In spite of these advances, the population of lesbian, gay, bisexual and transgender persons continues to suffer discrimination based on their sexual orientation, gender identity or gender expression.

18. Activist Ana Cisneros, from the organization *Alianza para la Diversidad Sexual LGBT* (Alliance for LGBT Sexual Diversity, *La Alianza*) mentioned the case of a “*travesti* sex worker who was studying at Andres Bello University from where she was expelled by the Rector, allegedly to avoid damaging the institutional image”; of “children who are forced by their Physical Education teachers to play football so they will cease to be effeminate” and of “the lesbian girl who was attacked in her school and was then rebuked by those in-charge of discipline so she will ‘change’ her attitude”²⁶. According to William Hernandez, in rural areas lesbian women have been obstructed from attending educational facilities and forced to work on activities that are typically done by men²⁷.

19. On June 9, 2009, a young gay man, F.O., who was working as a nurse in a public hospital, was attacked in public, in the hospital lobby, by one of his co-workers, a doctor. The attack caused serious damage to the victim’s physical, moral and psychological integrity.

20. In August 2009, a young lesbian, C.R., who works as a nutritionist, was subjected to verbal attacks in her workplace, a public hospital. The attacker was a female co-worker who called the victim “the doctor who looks like a man”, and added that “nobody should pay attention to the butch doctor”. The same colleague undermined the performance and professional attitude of the nutritionist, only because she was a lesbian woman. When C.R. resorted to the Department Head to clarify the situation, she was told that “it is a misunderstanding” and the attacker was not subjected to any reprimand or punishment.

21. In April 2010, the PNC (National Civilian Police) conducted a raid in an area where the LGTB community in San Salvador used to meet, to stop the illegal selling and consumption of alcohol. Bar and other business owners, as well as some patrons, were imposed fines reaching approximately 1,500 US\$ (one thousand and five hundred US dollars).

22. In spite of what the Public Health Ministry’s Agreement No. 202 (*supra* para. 14) prescribes, the existence of this instrument has not been publicized or explained to public officers. As a result, persons with non-conforming sexual orientation and/or gender identity, particularly lesbian women and trans people, continue to be mistreated in public health services because of their sexual orientation or physical appearance. Because of their masculine appearance or their public acknowledgement of being lesbians, these women are marginalized in these centres, even in the services offered under women’s healthcare policies. Doctors and nurses have said that “if lesbians were normal, these would not happen to them”, and have also uttered religious discourses²⁸. The nurse who provided medicines for sexually transmitted diseases to a lesbian woman, advised her to repent for her sins²⁹.

²⁵ Interview with William Hernandez, *supra* footnote 15.

²⁶ Ana Cisneros speech, *supra* footnote 24.

²⁷ Written statement by William Hernandez, *supra* footnote 3.

²⁸ Written statement by William Hernandez, *supra* footnote 3, and Interview with William Hernandez, *supra* footnote 15.

²⁹ Ana Cisneros speech, *supra* footnote 24.

23. Likewise, trans women's gender identity and expression are not acknowledged by health centres, and they are treated as men. Trans persons also lack access to holistic health care, including medical, psychological, sexual and reproductive care. The trans population has also been particularly affected by lack of access to hormonal treatment and sex reassignment surgeries in the country.

ARTICLE 3 (EQUAL RIGHTS FOR MEN AND WOMEN)³⁰

24. Because of their gender status, lesbian women are placed in a situation of extreme vulnerability. They have been discriminated against in health facilities, even in those devoted to women's health care; their personal integrity has been violated by public security forces, gang members and other private actors, and the State has failed to prevent and investigate those incidents; they have been obstructed from attending school and forced to work, and they are customarily victims of rape. Added to this, lesbian women feel intimidated to report these violations, leaving the perpetrators completely unpunished.

ARTICLE 6 (RIGHT TO LIFE)³¹

25. A serious aspect of violence against those of a non-conforming sexual orientation and/or gender identity, and particularly trans women, are the actions of gangs. These groups act in an extremely violent way, usually attacking and murdering them for at least four reasons: 1) initiation rites to be accepted into a gang; ii) prevailing impunity for crimes against sexual minorities; iii) psychosexual aversion to or fear of gay people; or iv) simply to obtain some kind of material advantage, usually in cash³².

26. In this context, even though violations of the right to life indicated in this report may have been perpetrated by private actors – gang members or not – none of these cases was investigated by the State in an effective and adequate manner, and the perpetrators have not been punished. Likewise, in spite of the high rates of executions based on the victims' sexual orientation or gender identity in El Salvador, mostly in the context of the debates around Constitutional reforms (*supra* para.12), State authorities did not act with due diligence to prevent such acts of violence. In addition, executions of LGTB persons in El Salvador have been marked by the perpetrator's extreme cruelty, as will be discussed below.

27. In the year 2004, at least eight homicides motivated by the victims' sexual orientation or gender identity were perpetrated. These cases include the following: a) J.A.M., whose body showed 30 injuries caused by a sharp pointed instrument, while the face had been smashed probably with a concrete plant pot; b) J.N.F.D., whose body was completely decomposed and whose head had been smashed by a huge rock; c) D.A.A.C., who also had a stone dropped on his head and was left

³⁰ Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant..

³¹ Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

[...]

³² Chuck Stewart (ed.), *The Greenwood Encyclopedia of LGBT Issues Worldwide*. Greenwood Press, Santa Barbara, page 120.

disfigured and unrecognizable. After the crime, the murderer had reportedly visited the victim's house and asked his mother if "D, the faggot, was he your son?"; d) J, whose body seems to have been impaled and cut with broken glass; e) J.C.V, who was found dead with three deep cuts caused by a sharp instrument at the base of his skull; f) M.A.P.B., murdered by two injuries caused by a sharp instrument in the thorax; g) J.L.A., murdered in his workplace by several unknown persons who shot him in the back; and h) J.R.A., a school principal, of whose homicide there are several versions, including one indicating that the crime had been committed by students of his school³³.

28. In 2005, *Asociacion "Entre Amigos"* documented³⁴ two murders of gay men: a) J.A.R, whose body was found wrapped in a big-sized mattress, his feet tied with a cord and an electric extension wire, and mortally wounded by a sharp instrument³⁵, and b) C.A.M.M., who was murdered with a sharp instrument in his home³⁶.

29. Because of lack of technical and financial resources, *Asociacion "Entre Amigos"* was not able to compile information on violations of the right to life affecting LGTB persons in 2006.

30. In 2007, at least three persons were murdered: a) two adolescents, aged 17 and 19, whose bodies were found in a well, together with four other bodies. The Chief of Police estimated that the killers used at least 50 stones to beat them in the head and face, leaving them disfigured³⁷ (*infra* para. 56), and b) A.B., *travesti* and sex worker, who was brutally beaten and left abandoned during the night.

31. In 2008, *Asociacion "Entre Amigos"* documented³⁸ the following cases: a) W.A.S.M., found half-naked and murdered after being shot twice on the head³⁹; b) C.A.P., whose body was found lying face down, hands tied at the front with a cord and with traces of having been shot in the belly⁴⁰; c) V.E.C.U, victim of injuries caused by a sharp instrument⁴¹, and d) L.E.C.C., murdered after being beaten with a stone. On February 4, 2008, H.F.R, a volunteer at *Asociacion "Entre Amigos"*, was shot several times in the head and murdered. The victim was waiting for some other members of the group to carry out educational activities to prevent sexually transmitted infections and HIV/AIDS (*infra* para.50). Also, in June 16, 2008, W.A.G.C. who also was a human rights activist was murdered during the night. The victim was near a place known as The Triangle, in San Miguel city, when eight persons took him to an unknown destination. He had been a volunteer of *Asociacion "Entre Amigos"* since 2004 and on the day of his murder, had joined the working team assembled by the USA Center for Disease Control to conduct a study with persons living with HIV, sex workers and men who have sex with other men (MSM) (*infra* para.50).

32. Violations of the right to life based on the victims' sexual orientation or gender identity reached a peak in 2009, in the context of debates around the already mentioned Constitutional reforms. *Asociacion "Entre Amigos"* and "*La Alianza*" documented⁴² some of these cases: a) G.E.L.S, gay/travesti murdered after being shot eight times on the head; b) G.N., whose body was

³³ Written statement by William Hernandez, *supra* footnote 3.

³⁴ *Id.*

³⁵ Also reported in the newspaper *La Prensa Gráfica*, April 9, 2005.

³⁶ Also reported in *El Diario de Hoy*, May 10, 2005.

³⁷ *Alianza por la Diversidad Sexual LGBT*, *supra* footnote 17, Annex 3.

³⁸ *Id.*

³⁹ Published in the newspapers *El Mundo* and *MAS* on June 6, 2008.

⁴⁰ Published in the newspaper *La Prensa Gráfica* on June 24, 2008.

⁴¹ Published in *El Diario de Hoy*, July 16, 2008.

⁴² Written statement by William Hernandez, *supra* footnote 3, and *Alianza por la Diversidad Sexual LGBT*, *supra* footnote 17, pages 14 to 19.

found in a plastic bag, with signs of torture and the hands dismembered; c) D.J.N., murdered by gang members who physically tortured and then shot him, after having held him captive for several hours; d) S.S., trans woman, whose body showed signs of torture⁴³; e) Betzayda, trans woman, whose body was found seven days after her disappearance with signs of having been shot⁴⁴, and f) J.M.J., murdered after being suffocated and stabbed in his home. To this list must be added the name Tania, a young trans woman who was 17 years old and a sex worker and was kidnapped on June 9, 2009. In the three days that followed, the search was intense. When the victim's cell phone was called, unknown persons replied saying "She is going to die, that is what she deserves", or "You will be next", while moans could be heard as a background sound. These calls were not made by the relevant authorities but by the victim's friends. On June 15, 2009, Tania's body was found, with signs of having been tortured: her legs and arms were cut, and her body showed signs of extremely violent trauma⁴⁵ (*infra* para. 56).

33. In spite of the seriousness of the above described murders, none of them was effectively investigated by the State and all perpetrators are still unpunished.

ARTICLE 7 (PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT)⁴⁶

34. From the cases described in the previous section, it is possible to confirm that in some of them the murder was preceded by the practice of torture or ill-treatment. In spite of the lack of official data and systematic information, Salvadorean organizations have stated that the personal integrity of LGBT persons have been systematically violated by State and non-State actors, without the State adopting the necessary measures to prevent and investigate such acts.

35. As an example, *Asociacion "Entre Amigos"* reported that on February 13, 2004, around 12 am, N.R.H., C.T. and R.C. were physically and verbally attacked by unknown persons who were driving a private car. The attackers threw stones at the victims, injuring N.R.H. in the hand. He was taken to the hospital by his friends.

36. The *Asociacion* also reported the case of E.H. and G.C., a stable gay male couple, who have been subjected to constant threats by a neighbour, who has also spat on their faces, called them "AIDS carriers" and threatened to murder them. On August 25, 2009, the same neighbour uttered death threats against E.H., which prompted the victim to formally report the threats to the National Civilian Police. But the officer taking the complaint refused to write in the report that the victim was gay, that he lived with his partner and considered the attacks an expression of homophobia. The officer stated that he was unable to do it, as those circumstances were not contemplated by the law.

37. As indicated above (para 19), on June 9, 2009, the young gay man F.O, who works as a nurse in a public hospital, was physically attacked by a doctor working in the same institution. Also on July 3, 2010, members of *Asociación Solidaria para Impulsar el Desarrollo de Travestis, Transgéneros, Transexuales y HSH* (ASPIDH, Solidarity Association to Promote Development for

⁴³ Published in the newspaper *DiarioCoLatino.com* on June 15 and 17, 2009, and "*Crímenes de odio enlutan El Salvador*" in the newspaper *El Mundo*, August 2, 2010.

⁴⁴ Mentioned in "*Crímenes de odio enlutan El Salvador*" newspaper *El Mundo*, August 2, 2010.

⁴⁵ Published in *DiarioCoLatino.com*, June 15, 2009 and June 17, 2009, and in "*Crímenes de odio enlutan El Salvador*" in newspaper *El Mundo*, August 2, 2010.

⁴⁶ Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Travestis, Transgenders, Transsexuals and MSM) Arco Iris, suffered violations of their personal integrity during a raid carried out by the National Civilian Police that searched persons in the bus in which the activists were travelling (*infra.* para 47).

38. As for trans persons, particularly those engaged in sex work, they are often arrested by public security officers invoking contraventional ordinances. In spite of the dispositions in Presidential Decree No. 56, public security forces continue perpetrating physical and verbal attacks against these persons⁴⁷.

39. In regard to the situation of lesbian women, it is compounded by the activities of gangs. According to *Asociacion "Entre Amigos"*, these groups harass lesbian women "sometimes beating them so badly that they have to be hospitalized to take care of their wounds". Lesbian women have also been subjected to different forms of abuse by police officers, who "on some occasions have made them undress and have even raped them"⁴⁸. Rape, when committed by public officers or relatives, is used as a form of pressure against lesbian women.

40. Moreover, on June 13, 2009, after a meeting of the lesbian, gay, bisexual and transgender community to prepare for the Gay Pride celebrations, at 7 pm two lesbian women, A. Ayala y B. Romero, were riding a motorbike along Boulevard de los Heroes. A black car approached and the persons inside the vehicle started to shout at them: "You two are butch, we will kill you, we will put a bomb on the day of the Parade... we know where you live and we will get you". While the victims tried to escape through a different street, the individuals in the car threw empty cans and bottles at them. The two women did not report this aggression to the authorities, for fear of reprisals⁴⁹.

41. Those responsible for the actions described in this section have also gone unpunished.

ARTICLE 9 (RIGHT TO PERSONAL LIBERTY AND SECURITY)⁵⁰

42. Even though sexual relationships between persons of the same sex are legal in El Salvador, according to what the HRC itself has affirmed (*supra* para 5), there are contraventional dispositions affecting sex workers, including trans women who lack access to other job opportunities⁵¹. These regulations punish sex work and other acts considering them as against public morals. The Contraventional Ordinance of San Salvador City states the following,

⁴⁷ Written statement by William Hernandez, *supra* footnote 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

⁵¹ Interview with William Hernandez, *supra* footnote 15.

Art. 36.- Trade in sexual services.

Whoever offers or solicits sexual services in public and in a clearly visible or scandalous way disturbs the public order, damages morals and good customs, and commits a crime against decency by his/her nakedness or through obscene words, gestures, attitudes or exhibitions, will be punished with a fine of three hundred to a thousand Colones⁵².

43. Invoking arbitrary regulations that are against the dispositions of the ICCPR, sex workers and particularly those who are also trans persons, have been deprived of their freedom by public security officers and fined. These agents usually do not stop at arrest, but also verbally and physically attack sex workers. Moreover, the detention procedure is not accompanied by due judicial guarantees⁵³.

ARTICLE 17 (RIGHT TO PRIVACY)⁵⁴

44. Violations of the right to privacy of persons with a non-conforming sexual orientation and/or gender identity, including their sexual lives, have been committed by State agents in El Salvador. For instance, to obtain their ID papers (*Documento único de identidad*), trans women are forced to present themselves as men for the photo, hiding their feminine appearance. To this end, they are forced to wash their faces to remove any traces of make-up, tie their hair up and wear a jacket. This practice also violates their right to expression, guaranteed by Article 19 of ICCPR⁵⁵.

45. Furthermore, the Salvadorean legislation only allows for changing a person's name under exceptional circumstances and provided that the new name reflects the same gender as in the original document. Thus, trans persons have not been able to change their names in keeping with their gender identity and expression. Changing the gender recorded in the ID papers is also not allowed. In 2003, a lawyer submitted a request to add in his trans client's ID the expression "known as [the female name of choice]". The request was held as inadmissible and a disciplinary sanction was imposed on the lawyer. Besides the difficulties already raised by the law, it is hard now for trans persons to find a lawyer who will be willing to make any intervention of this kind⁵⁶.

46. As it has already been stated, persons of a non-conforming sexual orientation and/or gender identity who are engaged in sex work have often been deprived of their liberty and fined, invoking current contraventional laws (*supra* para 42).

⁵² Ordenanza Contravencional de San Salvador, Article 36. Available at: <http://www.csj.gob.sv/leyes.nsf/ef438004d40bd5dd862564520073ab15/fececc6696e533d8062568a2005f2513?OpenDocument> (in Spanish). Consulted on September 28, 2010.

⁵³ Written statement by William Hernandez, *supra* footnote 3.

⁵⁴ Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

⁵⁵ Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

⁵⁶ Interview with William Hernandez, *supra* párr. 15.

47. On July 3, 2010, M.H. and W.R.H.Z, members of *ASPIDH Arco Iris*, were travelling by bus when the vehicle was stopped by the National Civilian Police (PNC) for a passenger search. An officer requested men to get off the bus. After that, a female officer got in the bus and started to search the female passengers; eventually she came to search the purse of M.H., a trans woman. Few minutes later, another officer arrived and demanded that M.H. descended from the bus. When she said that she had already been searched, the officer replied that “You should get off the bus, even if you had already been searched, because even though you dress as a woman, you are still a man”. M.H. got off the bus and, asked by the officer, opened her purse once again to be searched. But the officer demanded that she turned, placing her hands behind her neck, so he could body search her. W.R.H.Z. requested that the officer did not engage in such action, as it constituted a violation of Presidential Decree No. 56. As a response, the officer demanded to see the ID papers of both activists, and threatened to arrest them. When M.H. and W.R.H.Z. mentioned that they worked for a human rights organization and started to call other activists, the officer tried to give them back their IDs and asked them to leave the spot. A PNC Assistant Inspector who was called to the scene tried to enter into a dialogue with the victims and expressed that behaviours like this resulted from lack of knowledge about the rights of trans people on the part of the officers and from the fact that many trans people were indeed guilty of criminal acts. This incident was reported to the *Procuraduría para la Defensa de los Derechos Humanos* (PDDH, Ombudsman Office). A representative from the Office went to the scene, heard both parties’ versions of the incident, and ordered that the activists were given back their ID papers and invited them to submit a formal complaint at the Ombudsman Office⁵⁷.

ARTICLE 22 (RIGHT TO FREEDOM OF ASSOCIATION)⁵⁸

48. For several years, human rights organizations advocating for LGBT persons were not able to legally register with the Home Affairs Ministry. According to William Hernandez, this was due to “the nature of their human rights work on populations living in situations of vulnerability. Plain bureaucracy was used as a pretext, letting the deadlines prescribed by law expire so the organizations would see their applications cancelled and were forced to start the procedures again”. The activist adds that since the new government took office the organizations were finally able to acquire legal status: for 9 years Hernandez had been unsuccessfully trying to register *Asociacion “Entre Amigos”* as a non-governmental organization with the said Ministry. Under the new administration, the procedure was completed in three months.

⁵⁷ Summary of file SS-0473-2010 from *Procuraduría para la Defensa de los Derechos Humanos*; electronic communication by Marcela Romero, on behalf of *Red LACTRANS*, July 5, 2010; “*Transexuales de El Salvador denunciaron atropellos y violaciones de la policia nacional*” in Digital Transexual July 21, 2010. Available at: <http://www.carlaantonelli.com/notis-19072010-transexuales-salvador-denunciaron-atropellos-de-la-policia.htm>.

Consulted on September 26, 2010.

58 Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

49. In the period covered by this report, different acts of violence, threats and harassment have been committed against LGBT community organizations and activists, to restrict their activities. For instance, between January 1995 and April 2009, *Asociacion "Entre Amigos"* has been subjected to nine illegal searches of its premises. During the early morning hours, unknown persons broke into the office and, besides destroying the premises, took goods having no economic value like documents related to organizational administration and activities, such as the list of participants in events, photos and financial information. In spite of the break-ins having been reported, none was effectively investigated by State authorities, a situation that forced the *Asociacion* to "constantly change offices to somehow guarantee the safety of its staff and work materials".

50. In the same line, the undersigned organizations highlight the following incidents that took part in the context of discussions around the Constitutional reforms already mentioned:

- a) On May 30, 2006, during the early morning, the office of *Asociacion "Entre Amigos"* was again broken into: its files were searched and their contents dropped on the floor. The invaders also left a hand-written note with death threats against the organization members. The next day, at 3 pm after having waited for more than 18 hours for the National Civilian Police (PNC) experts to collect fingertips from the crime scene, the *Asociacion* representatives went to the PNC offices to formally report the incident. On this occasion they felt "very uncomfortable, because the officers behaved in a weird way, saying nasty words and shouting at each other, but their comments were all about me [William Hernandez]".
- b) On June 1, 2006, at about 6.40 pm, after having left his bodyguard at a bus stop and while he was leaving his car to enter the *Asociacion* office, William Hernandez was threatened by armed individuals who i) told him to suspend the activities related to the constitutional reform planned for June at the Legislative Assembly (*supra*, para. 12); ii) referring to May 30, they added "Stop making nonsense in the street ... I looked inside already and found nothing... but here I will find what I am looking for, and remember that before you get married I will KILL YOU"; and iii) robbed the activist's handbag in which he kept a laptop, a digital recorder and a digital camera. This incident was reported to the PNC delegation *Centro* (neighbourhood) and it was followed-up by the Department of Criminal Investigations, but without any results. As a result of this incident, the *Asociacion* changed office a month later⁵⁹.
- c) As it has already been stated, two activists from the LGBT community were murdered: i) H.F.R., a volunteer with *Asociacion "Entre Amigos"*, on the same day in which he was to take part in organizational activities; and ii) W.A.G.C. who volunteered with *Asociacion "Entre Amigos"* since 2004 and on the day of his impending death had joined the working team of the USA Center for Disease Control (*supra* para. 31).

51. As the debate on Constitutional reforms drew to a close (*supra*, para. 12), the threats and harassment against LGBT organizations decreased. However, in May – when sexual diversity is celebrated– the organizations were threatened and harassed again. Electronic messages from the address neonazi2009@gmail.com were received through the official website of the gay community. The author of the messages claimed to have information on members of *La Alianza* and threatened to throw bombs during the Gay Pride Parade. *La Alianza* received another message from the same

⁵⁹ Written statement by William Hernandez, *supra* footnote 3. The incident was also circulated by the International Gay and Lesbian Human Rights Commission on August 28, 2006.

person, asking where the organization was holding its meetings so he could go and kill the members. The website of *Asociacion "Entre Amigos"* was also damaged by hackers on several occasions, in spite of being protected by the required security programs⁶⁰.

52. Because of the death threats and after a hard and long process, William Hernandez obtained personal protection since 1999. In 2008, the rules to obtain personal protection were changed and since August of that year the activist has not had access to this service. However, the protection provided in previous years was restricted to William Hernandez and did not include the other *Asociacion* members who remained – and continue to be – in a situation of risk due to their work for the organization.

53. Because of the failures in investigating these incidents, it is not possible to affirm that the crimes have been committed by State actors. Nevertheless, as it failed to investigate the incidents in a serious and effective manner, or to take action to prevent their occurrence, the State has not fulfilled its obligation to protect the right to freedom of association for the persons under its jurisdiction.

ARTICLE 23 (FAMILY LIFE)⁶¹

54. Based on the notion that the family is based upon the marriage or stable union between a man and a woman, the Salvadorian legislation does not allow the adoption of children by same-sex couples (*supra* footnote 10).

55. Likewise, there are no laws addressing domestic violence in same-sex couples. Persons in this type of relationship are not protected by the Law against Family Violence, whose Article 3 states that “any direct or indirect action or omission causing physical, sexual or psychological harm or death to **family members** is considered family violence” (bold ours).⁶²

56. Besides the restrictions already placed to their family life, the lesbian, gay, bisexual and transgender population had to face in recent years the attempt to reform Articles 32, 33 and 34 of the Constitution to explicitly forbid the recognition of same-sex marriages celebrated or recognized by other countries’ legislation; de-facto same-sex unions; and the adoption of children by same-sex couples (*supra* para. 12). As already indicated in this report, the debate on this bill created an environment of intolerance and hostility towards LGBT people, who were victims of threats and violence.

⁶⁰ Written statement by William Hernandez, *supra* footnote 3.

⁶¹ Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children. .

⁶² Ley contra la Violencia Intrafamiliar, El Salvador, Article 3. Available at: <http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/ea93e5a68de3343906256d02005a3a9e?OpenDocument>. Consulted on September 28, 2010.

ARTICLE 24 (SPECIAL PROTECTION FOR CHILDREN)⁶³

57. As indicated in the section on violations to the right to life, at least two murders of LGBT children have been documented: i) a 17 year old gay boy, who was executed together with five other persons in May 2007 in La Libertad region; and ii), Tania, a 17 year old trans girl, who was murdered in June 2009 (*supra* paras 30 and 32). Particularly in relation to the latter, organizations have highlighted that due to the lack of opportunities, the girl was engaged in sex work and thus exposed to a wide array of human rights violations.

58. In regards to discrimination in State schools, in some of them children have been forced by Physical Education teachers to play football in order to correct their effeminate behaviour. Also, after being the target of attacks at school for her sexual orientation, a lesbian girl was rebuked by the disciplinarian authority to change her attitude⁶⁴. *Asociacion "Entre Amigos"* has stated that the cases it brought to the knowledge of the Ministry of Education have received the deserved attention. However, it highlighted that most cases related to incidents of violence and discrimination in schools are not reported out of fear or the belief that reporting them will not bring about any positive effects⁶⁵.

⁶³ Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State [...]

⁶⁴ Ana Cisneros speech, *supra* footnote 24.

⁶⁵ Interview with William Hernandez, *supra* footnote 15.

C) RECOMMENDATIONS

59. Since 2009, El Salvador has made some progress in protecting the human rights of LGBT persons, particularly through the adoption of Presidential Decree No. 56 and Agreement No. 202 of the Ministry of Public Health and Social Welfare, as well as by creating the Sexual Diversity Division. It can be appreciated that dialogue and cooperation between the State and civil society organizations has increased. In spite of these advances, LGBT persons still face a serious situation of vulnerability and discrimination. Their human rights have been violated by State and non-State actors, without the former having implemented effective measures to prevent, investigate and punish those abuses.

60. Faced with this situation, the State must adopt all adequate and necessary measures, of legal, administrative and/or judicial nature, to ensure respect, protection and promotion of human rights without any distinction based on a person's sexual orientation, gender identity or gender expression. To this end, El Salvador should,

- a) Circulate among public officers the text of Presidential Decree No. 56 and Ministry of Health Agreement No. 202, as well as promote training and sensitization programs on those norms and the rights of LGTB persons. Those activities must be aimed mostly to the health, education and public security personnel.
- b) Abstain from adopting any measure representing a step back in terms of the rights of those with a non-conforming sexual orientation and/or identity.
- c) Adopt the necessary legal measures in order to include in its legal system norms that explicitly forbid discrimination based on sexual orientation, gender identity and gender expression.
- d) Amend and/or adopt internal norms to i) avoid any discriminatory treatment of same-sex couples as that resulting, for instance, from some dispositions of the Family Code and the Law against Family Violence; and ii) to allow trans persons to change the names and gender recorded in their ID papers.
- e) Proceed with a swift, impartial and effective investigation on the incidents causing human rights violations against persons on the basis of their sexual orientation and/or gender identity, particularly of those characterized as "hate crimes". The participation of victims, relatives or legal representatives must be guaranteed in the context of these processes which must proceed in accordance with international human rights norms on the matter.
- f) Implement other strategies to avoid impunity in cases of human rights violations committed against persons on the basis of their sexual orientation and/or gender identity.
- g) Implement a system for compiling statistical information on violence and other discriminatory acts perpetrated against persons on the basis of their sexual orientation, gender identity and gender expression.
- h) Design and implement a national public policy to combat discrimination based on sexual orientation, gender identity and gender expression, with the involvement of lesbian, gay, bisexual and transgender organizations and activists. The information compiled in accordance

with the previous item must help in this process. The policy must take into account the special situation of children with a non-conforming sexual orientation, gender identity and gender expression.

D) QUESTIONS TO THE MEMBER STATE

- a) Why has the State failed to submit the information requested by the HRC in their Concluding Observations to the Third, Fourth and Fifth Periodic Reports on “violence or discrimination based on sexual orientation”?
- b) Which actions has the State adopted to implement the dispositions of Presidential Decree No. 56 and Ministry of Health Agreement No. 202? In this regard, is the State planning to implement training and sensitization activities for public officers? Has it designed specific programs for lesbian, gay, bisexual and transgender persons to access comprehensive health care services?
- c) Which measures has the State adopted to guarantee that sex workers, and particularly trans sex workers, rights are not violated by public security forces?
- d) How is the State protecting children from discrimination based on sexual orientation, gender identity and gender expression, particularly in the context of the State educational system?
- e) Which actions has the State implemented to overcome impunity for acts of violence and discrimination perpetrated on the basis of the victims’ sexual orientation, gender identity and gender expression?

HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS SHADOW REPORT ON EL SALVADOR

SUMMARY

Relevant Domestic Legislation

The shadow report highlighted the following aspects of the Salvadorean legislation,

- The Constitution of the Republic and the penal norms do not explicitly prohibit discrimination based on sexual orientation, gender identity and gender expression.
- Sexual relationships between persons of the same sex are legal in El Salvador. However, same-sex marriage is not allowed and same-sex de-facto unions are not recognized.
- Adoption of children by same-sex couples is not allowed. Also, the Law against Family Violence does not apply to domestic violence occurring in same-sex couples.
- Contraventional ordinances affecting sex workers, and particularly trans sex workers who have no access to other employment opportunities, are still in place.

State actions

The State adopted Agreement No. 202 to eradicate all forms of discrimination based on sexual orientation in public health services, and Presidential Decree No. 56 to avoid all forms of discrimination based on gender identity and/or sexual orientation in the public administration. It has also created the Sexual Diversity Division under the Social Inclusion Secretary.

Substantive violations

Acts of violence and discrimination against the lesbian, gay, bisexual and transgender population in El Salvador keep occurring, and the perpetrators remain unpunished. Some of these acts were described in this shadow report, including

- 27 cases of homicide against persons of a non-conforming sexual orientation and/or gender identity, among them two human rights defenders and two children;
- 7 incidents of physical and/or verbal aggression. Two of them were committed in the victims' workplace, by colleagues, and another one was aimed at restricting the activities of two lesbian, gay, bisexual and transgender community activists;
- Discriminatory acts based on the victims' sexual orientation and gender identity, committed by public officers and students in some schools, affecting some boys and one girl;
- Abuses perpetrated against two trans persons by National Civilian Police officers during a search operation;
- Discrimination based on sexual orientation or gender identity faced in health facilities;
- Prohibition for trans people to change the names and genders recorded in their ID papers so they can be consistent with their gender identities and expressions. Also, trans women are forced to appear as men in their ID photos; and
- Threats to and harassment of human rights defenders advocating for LGBT human rights.