



Uniformed Injustice

State Violence Against LGBT People in El Salvador

A PRODUCT OF THE
GEORGETOWN LAW HUMAN RIGHTS INSTITUTE FACT-FINDING PROJECT



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A Product of the Georgetown Law Human Rights Institute Fact-Finding Project

April 21, 2017

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ACKNOWLEDGEMENTS

The Georgetown Law Human Rights Institute greatly appreciates the assistance and support of all the organizations and people who have helped make this report possible.

The researchers of the Fact-Finding Project would like to thank Georgetown University Law Center for its continued support and dedication to the Institute's mission to promote the understanding of and respect for human rights, the practice of human rights law, and to develop Georgetown Law's place as a global leader in human rights. We would also like to thank the Institute's Director, Andrew Schoenholtz, for his continued commitment to the Fact-Finding Project, which provides law students with an opportunity to acquire practical skills for the study, promotion, and protection of human rights.

We are grateful to our Professor, Fanny Gómez-Lugo, and to Patrick Griffith, in his capacity as Dash/Muse Fellow, who have been a constant source of wisdom, guidance, insight, expertise, and support throughout this project.

We want to thank the following practitioners and their organizations: Ana Cisneros (independent), Ana Montano of ALRP, Mónica Hernández of ASPIDH, Dr. Mendizábal of ASTRANS, Ruby Corado and Patti Hernández of Casa Ruby, Karla Guevara of Colectivo Alejandría, Karla Avelar of COMCAVIS, Jeanne Ridders of Cristosal, Leonor Arteaga of DPLF, William Hernández of Entre Amigos, Andrea Ayala of ESMULES, the team of FESPAD, José Acosta of Gay Sin Fronteras, Villy Rivera of Generación Hombres Trans HT 503, Shawn Gaylord and María Pérez Santiago of Human Rights First, the team of La Casa del Pueblo, and Juan Pablo Ramos Orellana of the Office of Legal Aid of Universidad Centroamericana "José Simeón Cañas."

We would also like to thank the offices of the Salvadoran Government whose members agreed to meet us, including the *Asamblea Legislativa de la República de El Salvador*, the *Fiscalía General de la República*, the *Policía Nacional Civil*, the *Fuerza Armada de El Salvador*, the *Procuraduría para la Defensa de los Derechos Humanos*, and the *Secretaría de Inclusión Social*. Additionally, we are thankful to Dr. Vanda Pignato, Secretary of Social Inclusion, for her time.

We are indebted to those who have provided us with expert advice and direction during the course of this project: Dr. Irene A. Jillson from Georgetown University's Institutional Review Board, Nicole Santamaría, María Isabel Rivero and Eva Fontana of the Inter-American Commission on Human Rights, and Francisco Quintana from CEJIL.

Most of all, we would like to thank all the brave and inspiring members of the Salvadoran LGBT community. Thank you for sharing your stories with us. Our hope is that this research will make a concrete and positive impact on the lives of those whose voices made it possible. We anticipate that the existence of a formal analysis of state violence committed against LGBT people will shed a much-needed light on human rights violations in El Salvador. Our recommendations seek to pressure El Salvador, the United States, the Organization of American States, and the Inter-American Commission to act independently, as well as collectively, to address these violations and bring an end to the suffering.

FOREWORDS

The publication of this report on state violence against LGBT persons in El Salvador marks the twelfth year of the Fact-Finding Project overseen by the Human Rights Institute at Georgetown University Law Center. Both the research topic and the methods used in this report constitute a valuable contribution to the study and promotion of human rights. They link an analysis of national and international norms on the subject matter with an appreciation and evaluation of their concrete functioning in reality, from observations and testimonies gathered during field work.

Without a doubt, this work is indebted to the countless activists, human rights defenders, and victims who are open and willing to share their stories, despite the fact that many of their stories are cruel evidence of the physical and mental violence they have endured. It is thus essential for researchers in projects like this to be able to gather and systematize—with integrity, honesty, and the utmost respect—the information and testimony of those who often put their lives at risk to make these reports possible.

The Human Rights Institute gives the students of the Fact-Finding Project the academic direction and foundation they need to become the next generation of human rights lawyers, endowed not only with knowledge but also an ethical and moral commitment to this cause. This report demonstrates the Institute's success in this objective, guaranteeing that its students are well trained in the complexities integral to this type of research.

I think that it is important to point out the timeliness of this report. The rights of lesbian, gay, bisexual, and transgender persons have received worldwide attention during the last decade, with marriage and adoption rights being two of the greatest victories in the struggle to reach equality and the elimination of discrimination on the basis of sexual orientation and gender identity. However, even today in many countries there persists the alarming situation in which the mere fact of identifying, or being perceived, as an LGBT person can still be very dangerous.

It was not until recently that legislation was passed in El Salvador to protect sexual minorities. And even though the country has taken some steps towards equality for the LGBT community, there are still deeply ingrained social prejudices that lead to the persistence of systematic violence carried out by State actors. In addition, the absence of processes aimed at achieving accountability plays into the perpetrators' ability to act with impunity, feeding the cycle of violence and discrimination. This extends to crimes and other violence motivated by hatred or prejudice that are carried out by other members of society.

This report engages with these matters in a thorough and concise manner. It draws from interviews with a wide range of actors and victims in order to portray a legitimate and appropriate description of the facts. Additionally, it offers thoughtful and pragmatic recommendations on best practices. Based in a constructive and well-grounded vision, the report suggests changes to public policies that must be adopted by Salvadoran authorities in the executive, legislative, and judicial branches, the police and the armed forces, and other State entities. It also articulates recommendations on how international organizations and other governments can contribute their experience and influence to assist El Salvador in the implementation and enforcement of non-discrimination laws, particularly those that protect the rights of LGBT persons.

For all of the reasons stated above, I hope that the authorities of El Salvador will effectively utilize this report as a tool to improve the normative framework for integrally protecting the human rights of its LGBT community. This is in addition to adopting public policies and corrective measures to acknowledge and remediate the grave violations that still exist in diverse areas of State action and daily life. Impunity for these violations of the fundamental rights—life and integrity, dignity, equality, non-discrimination, liberty, personal development, access to justice, education, health, work, among so many others—of LGBT persons must end.

Francisco José Eguiguren Praeli

**President of the Inter-American Commission on Human Rights,
IACHR Rapporteur on the Rights of LGBTI Persons**

March 31, 2017

Each year for over a decade, the Human Rights Institute has trained a group of students in undertaking systematic human rights fact-finding and making concrete policy and legal recommendations based on that research. This report is a tribute to the Institute's diligent preparation of its students in the skills, methodologies, and ethics of fact-finding.

This year's report, *Uniformed Injustice*, examines violence against LGBT persons in El Salvador and the “enormous debt to the LGBT population” of the State arising from its failure to act with due diligence to prevent the violence, fully investigate it when it occurs, prosecute and punish the perpetrators, and repair the victims. Despite important initiatives undertaken by El Salvador—including the Directorate of Sexual Diversity, the Permanent Roundtable on the Human Rights of the LGBTI Population, and Presidential Decree No. 56 prohibiting discrimination on the basis of sexual orientation and gender identity by public offices and agencies—this report confirms disturbing acts of violence by the police and armed forces, as well as significant institutional barriers in accessing justice in respect of this violence.

During my tenure as a member of the Inter-American Commission on Human Rights and as its first Rapporteur on the Rights of LGBTI Persons, the Commission received information through hearings, applications for precautionary measures, its 15-month Registry on Violence against LGBTI Persons, questionnaires and on-site visits on the grave situation of violence against LGBTI persons in the Americas. In the context of El Salvador, this report confirms the pervasive, multidimensional, and still largely hidden nature of the violence, the patterns of judicial ineffectiveness and impunity in cases of violence against LGBT persons, and the aggression and violence faced by LGBT human rights defenders.

This report is also a distinct contribution that goes beyond corroborating earlier findings. Undoubtedly violence against LGBT persons reflects wider patterns of citizen insecurity in El Salvador and beyond, but there is more. *Uniformed Injustice* clarifies and elaborates on distinct features of the violence that demand legal and policy responses. The report reveals continuities in violence against LGBT persons by military officers from the civil war to today, with these officers now often engaged in ordinary policing. *Uniformed Injustice* also illuminates the ways in which law enforcement officials target LGBT persons for violence because they are LGBT or commit violence once they discover a person's sexual orientation or gender identity. Even when public officials are the aggressors, much of this violence happens in private, invisible to most but the victims. The report establishes how barriers to accessing justice, in filing complaints, in their investigation, and in the failure to apply existing laws foster impunity and distrust in the legal system.

“The law cannot rule if it cannot not protect.” The recommendations in this report emphasize how fundamental the protection of the human rights of all is to adherence to the rule of law. Among these important recommendations, I want to highlight the need for the government of El Salvador and others in the Americas to collect sufficient and disaggregated data about these multifaceted violations. Fact-findings of this nature help to reveal the truth of human rights violations, but ultimately it is the duty of the State to systematize research and data collection on the extent and nature of human rights violations, with a view to developing legal and policy reforms.

I encourage the government of El Salvador to carefully review the findings in *Uniformed Injustice* and to implement the important recommendations therein.

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March 24, 2017

Table of Contents

Acknowledgements	2
Forewords	3
Definitions & Abbreviations	8
Executive Summary	10
Methodology	12
Legal Framework	13
International	13
Domestic	23
Context & Background	27
Situation of Violence for all Salvadorans	27
Discrimination against LGBT Salvadorans in All Aspects of Life	30
Alex Peña	32
Findings	35
Human Rights Defenders	35
Violence by State Actors: Police & Armed Forces	39
Barriers in Access to Justice	55
Conclusion & Recommendations	66

DEFINITIONS & ABBREVIATIONS

DEFINITIONS

Lesbian A woman who is emotionally and sexually attracted to other women.¹

Gay A man who is emotionally and sexually attracted to other men.²

Bisexual A person who is emotionally and sexually attracted to people of their own gender and people of other genders.³

Transgender A person whose gender identity and assigned sex at birth do not correspond. Also used as an umbrella term to include gender identities other than male and female.⁴

Travesti (Latin America) Individuals who were assigned male sex at birth and who, often from a young age, adopt female names, pronouns, clothing styles, and hair styles. They may or may not take female hormones, modify their bodies with silicone, and/or have sex reassignment surgery. They tend to claim their own identity as opposed to identifying themselves as either men or women.⁵

LGBT An umbrella term encompassing lesbian, gay, bisexual, and transgender people.⁶ The researchers acknowledge that some of the people who are the focus of this report may not self-identify as belonging to any of the categories implied by the term LGBT.⁷

Gender Identity Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerisms.⁸

¹ National LGBT Health Education Center, Glossary of LGBT Terms for Health Care Teams, available at: http://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary_March2016.pdf, accessed on March 24, 2017.

² National LGBT Health Education Center, Glossary of LGBT Terms for Health Care Teams, available at: http://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary_March2016.pdf, accessed on March 24, 2017.

³ National LGBT Health Education Center, Glossary of LGBT Terms for Health Care Teams, available at: http://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary_March2016.pdf, accessed on March 24, 2017.

⁴ National LGBT Health Education Center, Glossary of LGBT Terms for Health Care Teams, available at: http://www.lgbthealtheducation.org/wp-content/uploads/LGBT-Glossary_March2016.pdf, accessed on March 24, 2017.

⁵ Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism, A Guide to Sexuality Based Advocacy*, p. 98.

⁶ Oxford English Dictionaries, *Definition of LGBT in English*, available at: <https://en.oxforddictionaries.com/definition/lgbt>, accessed on March 24, 2017.

⁷ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 11.

⁸ *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, 2007.

Sexual Orientation Each person’s capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. This is integral to a person’s identity and does not depend on gender identity.⁹

ABBREVIATIONS

CAM *Cuerpo de Agentes Metropolitanos* (San Salvador Municipal Police)

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW Convention on the Elimination of All Forms of Discrimination against Women

CSO Civil Society Organization

Fiscalía *Fiscalía General de la República* (Public Prosecutor’s Office)

IACHR Inter-American Commission on Human Rights

IACtHR Inter-American Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

OAS Organization of American States

NGO Non-Governmental Organization

PDDH *Procuraduría para la Defensa de los Derechos Humanos* (Human Rights Ombudsperson’s Office)

PNC *Policía Nacional Civil* (Salvadoran National Civil Police)

UN United Nations

UDHR Universal Declaration of Human Rights

⁹ *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, 2007.

EXECUTIVE SUMMARY

“The State has an enormous debt to the LGBT population.”¹⁰

Lesbian, gay, bisexual, and transgender (LGBT) Salvadorans regularly experience discrimination and violence perpetrated by State actors. In January 2017, researchers from Georgetown University Law Center’s Human Rights Institute conducted interviews with LGBT individuals, activists, human rights defenders, and members of the Salvadoran government focusing on human rights violations committed by law enforcement and justice system officials.

The major findings of this report fall into three categories: violations perpetrated against human rights defenders; abuse by law enforcement, including police and military personnel; and obstacles to accessing justice and accountability.

- **Human Rights Defenders**

- Activists are subject to heightened policing.
- Law enforcement officials harass and dismiss concerns of human rights organizations.

- **Police and Military Violence**

- While engaged in law enforcement, members of the police and military have raped, beaten, stalked, arbitrarily searched, arbitrarily detained, extorted, intimidated, and threatened LGBT people.
- Police and soldiers initiate violence against people on the street whose nonconforming sexual orientation or gender identity is readily apparent.
- Police and soldiers escalate routine encounters (such as ID checks) into violent ones when they learn that a person is lesbian, gay, bisexual, and/or transgender.
- Police and military violence toward LGBT people is often sexual or gendered in nature.
- Police trainings on LGBT issues have had positive effects.
- Soldiers are not trained on LGBT issues.

¹⁰ Interview with Juana, pseudonym, San Salvador, Jan. 10, 2017. (*El Estado tiene una deuda enorme con la población [LGBT].*)

- **Access to Justice**

- LGBT victims are often prevented from filing complaints of human rights abuses.
- Police and prosecutors frequently fail to investigate crimes against LGBT people.
- Military officials have failed to hold soldiers accountable for violence toward LGBT people.
- Despite the regularity of violence, few cases of law enforcement abuse of LGBT people have been prosecuted.

While the country's high level of violence affects all Salvadorans, violence toward LGBT people is marked by hate, dehumanization, homophobia, and transphobia. Faced with the frequent threat of abuse and discrimination, many LGBT people consider fleeing the country.¹¹

To address the State's failure to respect and fulfill the human rights of LGBT persons, the researchers formulated recommendations to branches and agencies of the government of El Salvador, as well as to international actors who engage with it.

"The most effective way of guaranteeing the non-repetition and prevention of new attacks and violations of the rights of LGBTI persons, and of the defenders of their rights, is precisely the fight against impunity--...the investigation, prosecution, and punishment of those responsible."¹²

¹¹ Fueled by the murder of three transgender women, twenty-nine LGBT people left El Salvador in the first three months of 2017. IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

¹² Commissioner José de Jesús Orozco, IACHR Rapporteur on Human Rights Defenders, at IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017. (*La manera más efectiva de garantizar la no repetición o la prevención de nuevos ataques y violaciones a los derechos de las personas LGBTI y de los defensores y defensoras de sus derechos es precisamente la lucha contra la impunidad. Y en este sentido, sin duda, investigar, procesar, y sancionar las y los responsables.*)

METHODOLOGY

This report is the result of the Georgetown Law Human Rights Institute's legal and factual investigation assessing the nature and prevalence of institutional violence against lesbian, gay, bisexual, and transgender (LGBT) people in El Salvador. The findings and recommendations contained herein are derived from over 50 interviews with victims, human rights defenders, non-governmental organization (NGO) practitioners, and government officials that took place during a week-long fact-finding mission to San Salvador in January 2017.

The researchers designed this mission in accordance with the Lund-London standards for research involving human subjects and the research protocol was approved by Georgetown's Institutional Review Board.¹³ Through an extensive literature review and discussions with regional experts, the researchers identified institutional violence against LGBT people in El Salvador as a source of under-documented human rights violations. To provide the fullest picture of interactions between LGBT Salvadorans and justice system actors, the researchers sought perspectives from three relevant groups: victims representing a diversity of sexual orientations and gender identities, NGO practitioners, and human rights defenders,¹⁴ and government officials from the national police, military, Legislative Assembly, Public Prosecutor's Office, Human Rights Ombudsperson's Office, and the Secretariat of Social Inclusion. Interviewees were recruited through NGOs or via direct overtures, consistent with convenience sampling techniques. Interview questions were drafted in advance to address the specific roles of each interviewee. Researchers collected testimonial and documentary evidence from interviewees aided, when necessary, by interpreters.

To protect interviewees, researchers implemented an extensive consent process describing the research protocol. Potential interviewees were informed that no direct benefits would arise from their participation or lack thereof. Researchers and interpreters conducted all interviews in private locations, generally the offices of NGOs or government officials. Interpreters had experience working with the target populations and were subject to strict confidentiality agreements. Interview notes and audio recordings were stored on secure devices; Identifying information was removed from all quotations and stories used in the report, except where NGO practitioners and government officials consented to attribution. All other names are pseudonyms.

While these interviews provide a great deal of rich information regarding the interactions between LGBT people and government actors, the scale of the fact-finding mission was such that no statistical significance should be ascribed to the following findings.

¹³ Raoul Wallenberg Institute, *The Lund-London Guidelines* (2009), available at: <http://www.factfindingguidelines.org/guidelines.html>, accessed on March 24, 2017.

¹⁴ ASPIDH, ASTRANS, Colectivo Alejandra, COMCAVIS, ESMULES, Entre Amigos, FESPAD, and HT503.

LEGAL FRAMEWORK

El Salvador has legal obligations under international and domestic law that encompass and explicitly protect LGBT persons and human rights defenders. International treaties, human rights declarations, the Salvadoran Constitution, federal statutes, and State initiatives collectively condemn State violence and impunity and guarantee access to justice. The State may not discriminate against people on the basis of sexual orientation or gender identity when fulfilling its obligations to prevent, investigate, punish, and redress human rights violations.

INTERNATIONAL

State Responsibility under International Human Rights Law

International treaties impose upon states a fundamental obligation to respect and fulfill the human rights of all persons. This obligation is threefold: states must refrain from interfering with the enjoyment of human rights; protect individuals and groups from human rights abuses; and act affirmatively to facilitate the enjoyment of basic human rights.¹⁵ Under the American Convention on Human Rights (American Convention), El Salvador must “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”¹⁶ Its affirmative duty to prevent violations of human rights is triggered by “acts and omissions of its agents, even when those agents act illegally or otherwise outside the permitted sphere of their authority.”¹⁷

El Salvador has a duty to incorporate international treaties into domestic law. The American Convention mandates adoption of “such legislative or other measures as may be necessary to give effect to those rights or freedoms.”¹⁸ The Inter-American Commission on Human Rights

¹⁵ Office of the United Nations High Commissioner for Human Rights [OHCHR], *International Human Rights Law*, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>, accessed on March 24, 2017.

¹⁶ Organization of American States (OAS), *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 1.

¹⁷ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 437; I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C, No. 4, para. 170; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003. Series A No. 18, para. 76.

¹⁸ Organization of American States (OAS), *American Convention on Human Rights*, adopted by El Salvador on June 20, 1978, Article 2. The Inter-American Court of Human Rights has recognized that this principle has its source in treaties as well as custom. Inter-American Court of Human Rights, *Case of Heliodoro-Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186. See also Permanent Court of International Justice; *Exchange of Greek and Turkish Populations*, Greece v Turkey,

(IACHR) asserts that the duty of member states to prevent violations of their citizens' human rights "implies the adoption of all legal, political, administrative measures, and those regarding cultural changes, which ensure that a potential violation of human rights will be effectively addressed."¹⁹ In the context of law enforcement, the obligations to prevent violations, through training and other means, apply equally to military²⁰ and police forces. The jurisprudence of the IACHR and the Inter-American Court of Human Rights (IACtHR) regularly requires the armed forces to adhere to the American Convention and other human rights treaties.²¹

A state may not rely on its domestic law to excuse non-compliance with international treaties.²² The United Nations Draft Articles on the Responsibility of States for Internationally Wrongful Acts underscores that a wrongful act's "characterization is not affected by the characterization of the same act as lawful by internal law."²³ The Salvadoran Constitution provides that international treaties, including human rights treaties, are incorporated into and prevail over domestic law in case of conflict.²⁴ The Constitutional Chamber of the Supreme Court recognized the primacy of

Advisory Opinion, Series B no. 10; p. 20.

¹⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 389. I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C, No. 4, para. 175. See e.g., I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 37; I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 115; IACHR, Report No. 12/14, Case 12.231, Merits (Publication). Peter Cash. Commonwealth of The Bahamas, April 2, 2014, paras. 58 and 60.

²⁰ Since Salvadoran military officers in this context are being deployed for internal law enforcement purposes, not an armed conflict, the applicable law is international human rights law, not international humanitarian law. See, e.g., U.N. Code of Conduct for Law Enforcement Officials, Art. 1, Commentary (b) ("In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services").

²¹ See, e.g., I/A Court H.R., *Case of the Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95; I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251; I/A Court H.R., *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147.

²² The Vienna Convention on the Law of Treaties prohibits the use of domestic law as justification for failure to perform international obligations. United Nations, *Vienna Convention on the Law of Treaties*, signed by El Salvador on February 16, 1970, Articles 26 and 27.

²³ UN, General Assembly, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*; A/RES/56/83, Article 3.

²⁴ Constituent Assembly, Constitution of the Republic of El Salvador; Sec. Third, Ch. 1, Title IV, Art. 144-149. Nonetheless, the Constitution, under the same section, also stipulates that no international convention shall be ratified if it restricts or affects constitutional dispositions, unless the ratification includes reservations to those portions of the treaty which are contrary to the Constitution, thus rendering those portions as having legal effect within the country. The Constitution further grants the Salvadoran Judiciary powers to declare a ratified

international human rights treaties by holding that constitutional rights should be interpreted in light of human rights treaties.²⁵

Non-discrimination

The principle of non-discrimination, a bedrock rule of international law, requires states to ensure equal treatment of all persons under their jurisdiction. The doctrine traces its roots to the United Nations (UN) Charter,²⁶ the Organization of American States (OAS) Charter,²⁷ the American Declaration of the Rights and Duties of Man,²⁸ and the Universal Declaration of Human Rights (UDHR).²⁹

Subsequent international treaties expanded and cemented the non-discrimination principle. The International Covenant on Civil and Political Rights (ICCPR) mandates that states “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”³⁰ The American Convention requires states to “ensure to all persons...the free and full exercise of those rights and freedoms, without any discrimination.”³¹ The International Covenant on Economic, Social and Cultural Rights (ICESCR),³² the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),³³ and the Convention

treaty unconstitutional and therefore inapplicable.

²⁵ Because the Constitution and human rights treaties have shared goals, the relationship between the two is one of compatibility. Constitutional Chamber of the Supreme Court of El Salvador; accumulated cases 52-2003/56-2003/57-2003; April 1, 2004; Section V.3.

²⁶ “Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,” UN, General Assembly, *Charter of the United Nations*, June 26, 1945, 1 UNTS XVI, Article 55.

²⁷ “All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security.” OAS, *Organization of American States Charter*, ratified by El Salvador on August 15, 1950, Article 45(a).

²⁸ “All persons are equal before the law...without distinction as to race, sex, language, creed or any other factor,” OAS, *American Declaration of the Rights and Duties of Man*, adopted on April 1948, Article 2.

²⁹ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind,” UN, *Universal Declaration of Human Rights*, adopted on December 10, 1948, Article 2.

³⁰ UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on November 30, 1979, Article 26.

³¹ Organization of American States, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 1.

³² UN, General Assembly, *International Covenant on Economic, Social and Cultural Rights*, ratified by El Salvador on November 30, 1979, Articles 2(3) and 3.

³³ UN, General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, ratified by El Salvador on August 19, 1981, Article 1. Defining discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)³⁴ likewise include non-discrimination provisions. As recognized by the UN Human Rights Committee and the IACtHR, non-discrimination is inextricably tied to equality before and equal protection of the law.³⁵

As a party to these treaties, El Salvador is obligated to prevent and redress discrimination by State and non-State actors.³⁶ When acts of discrimination do occur, the State must take appropriate measures to attain redress for victims.³⁷

or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

³⁴ UN, General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, accession by El Salvador on June 17, 1996, Article 1(1). Defining torture as “severe pain or suffering... intentionally inflicted on a person... for any reason based on discrimination of any kind.”

³⁵ UN Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, November 10, 1989 (“Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”). I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 79: “Regarding the principle of equality before the law and non-discrimination, the Court has stated that “the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.” The Court’s case law has also indicated that at the present stage of development of international law, the fundamental principle of equality and non-discrimination has entered the realm of jus cogens.

³⁶ International Commission of Jurists, *Sexual Orientation, Gender Identity and International Human Rights Law*, at 26.

³⁷ OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 63; I/A Court H.R., *Case of Rosendo-Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, para. 203 (citing *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25); I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 227; and I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 211. *Cf.*, I/A Court H.R., *Case of Castillo Páez v. Perú*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, para. 43; *Case of Chitay Nech et al.*, para. 227, and *Case of Manuel Cepeda Vargas*, para. 211. “Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to repair it adequately and that this provision ‘embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.’”

Protection of Sexual Orientation and Gender Identity

The protections of international law, including non-discrimination provisions, extend to sexual orientation and gender identity. The Yogyakarta Principles enshrine this consensus and serve as an interpretive aid to international human rights treaties.³⁸ Other instruments, such as the Inter-American Convention against All Forms of Discrimination and Intolerance, specifically prohibit discrimination based on an individual's sexual orientation or gender identity.³⁹

Although the treaties binding El Salvador do not explicitly reference sexual orientation or gender identity, decisions by international courts and treaty bodies support the application of non-discrimination provisions to sexual orientation and gender identity. The ICCPR and ICESCR prohibit discrimination based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.”⁴⁰ In *Toonen v. Australia*, the UN Human Rights Committee held that the inclusion of “sex” in article 26 of the ICCPR requires states to protect against discrimination on the basis of sexual orientation.⁴¹ Subsequently, the UN Committee on Economic, Social and Cultural Rights recognized sexual orientation and gender identity as covered by the ICESCR's non-discrimination clause under ‘*other status*.’⁴² The American Convention's non-discrimination provision mirrors those of the ICCPR and the ICESCR, but uses “any other social condition”⁴³ rather than “*other status*”; in *Atala Riffo y Niñas v. Chile*, the IACtHR held that “social condition” includes sexual orientation and gender identity.⁴⁴

³⁸ Written in 2006 by a committee of human rights experts supported by the International Commission of Jurists and the International Service for Human Rights. Yogyakarta Principles.

³⁹ OAS, *Inter-American Convention against All Forms of Discrimination and Intolerance*, adopted on June 5, 2013, El Salvador is not a party to this convention, Article 1.

⁴⁰ UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on November 30, 1979, Article 26. UN, General Assembly, *International Covenant on Economic, Social and Cultural Rights*, ratified by El Salvador on November 30, 1979, Articles 2. UN, General Assembly, *Universal Declaration of Human Rights*, adopted on December 10, 1948, Article 2.

⁴¹ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (1994); see also, International Detention Coalition, *Position Paper LGBTI Persons in Immigration Detention*, at 17; Redlactrans, *The Night is Another Country*, at citation 3, para. 8.7.

⁴² UN Committee on Economic, Social and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* (2009), E/C.12/GC/20.

⁴³ OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 1.

⁴⁴ I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 91. In the wake of these precedents, international bodies increasingly recognized the significance of sexual orientation and gender identity to the implementation of human rights law. The committee charged with monitoring the application of CEDAW acknowledged that discrimination against women “based on sex and gender is inextricably linked with other factors that affect women, such as sexual orientation and gender identity.” UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, (2010), CEDAW/C/GC/28. The UN

Right to Personal Security and Integrity

The right to security and personal integrity is guaranteed by the ICCPR and the American Convention.⁴⁵ This most fundamental of human rights is directly implicated when State actors commit violence, including extrajudicial killings,⁴⁶ corrective rape,⁴⁷ and other forms of physical and sexual violence, against people. Under article 27 of the American Convention, states may not suspend these guarantees “in time of war, public danger, or other emergency.”⁴⁸

Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

Torture and cruel, inhuman, or degrading treatment or punishment are explicitly prohibited by the ICCPR, the American Convention, the CAT, and the Inter-American Convention to Prevent and Punish Torture (Inter-American Convention against Torture).⁴⁹ Under the CAT, torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” for the purposes of coercion or discrimination of any kind “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in

Committee against Torture ordered states to ensure that in practice all laws implementing CAT apply to persons “regardless of gender, sexual orientation, transgender identity.” UN Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2.

⁴⁵ UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on November 30, 1979, Article 5; OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 5.

⁴⁶ LGBT populations are “especially vulnerable” to extrajudicial killings, indicating that protections of the right to life have discriminatory impact. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.LN/II.rev.1 Doc. 36, Nov. 12, 2015, para. 114 (quoting UN, Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Addendum. Follow-up country recommendations: Colombia*, A/HRC/20/22/Add.2, May 15, 2012, para. 51.); see, A/HRC/29/23 *Discrimination and violence against individuals based on their sexual orientation and gender identity*.

⁴⁷ The IACHR has adopted a definition of “corrective rape” as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.” “The essence of these crimes is punishment for non-normative sexualities and genders.” These attacks combine “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.” Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.LN/II.rev.1 Doc. 36, Nov. 12, 2015, paras. 170-171, quoting Keren Lehavot and Tracy L. Simpson, *Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities*, June 27, 2013.

⁴⁸ OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 27.

⁴⁹ UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on November 30, 1979, Article 7; OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 5. See generally, UN, General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, accession by El Salvador on June 17, 1996; OAS, *Inter-American Convention to Prevent and Punish Torture*, ratified by El Salvador on October 17, 1994.

an official capacity.”⁵⁰ The Inter-American Convention against Torture addresses culpability similarly, but extends the definition of torture to include “methods...intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”⁵¹ Violations may occur at any stage of police or military custody and commonly include: rape,⁵² extortion of sexual favors, excessive force, beatings, using firearms to harm or incapacitate victims, forcing victims to publicly strip naked, hostility, humiliation, or verbal abuse.⁵³

Both the CAT and its Inter-American counterpart require states to take proactive steps to train police officers and other officials responsible for persons deprived of liberty to prevent torture or other cruel, inhuman, or degrading treatment or punishment.⁵⁴ In addition, the CAT explicitly mandates that states provide redress and compensation for victims of CAT violations.⁵⁵

Deprivation of Liberty

The ICCPR and the American Convention protect against arbitrary and illegal arrest, detention, or deprivation of liberty.⁵⁶ Due to its “special role as guarantor” in detention facilities, states are obligated to “safeguard the health and welfare of prisoners.”⁵⁷ Conditions that “exceed the inevitable level of suffering inherent in detention” violate detainees’ human rights.⁵⁸ Those who are legally detained are ensured humane treatment and “respect for the inherent dignity of the human person.”⁵⁹ The UN Office of the High Commissioner for Human Rights emphasized that

⁵⁰ UN, General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, accession by El Salvador on June 17, 1996, Article 1.1.

⁵¹ OAS, *Inter-American Convention to Prevent and Punish Torture*, ratified by El Salvador on October 17, 1994, Article 2.

⁵² I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215.

⁵³ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 132.

⁵⁴ UN, General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, accession by El Salvador on June 17, 1996, Article 10; OAS, *Inter-American Convention to Prevent and Punish Torture*, ratified by El Salvador on October 17, 1994, Article 7.

⁵⁵ UN, General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, accession by El Salvador on June 17, 1996, Article 14.

⁵⁶ UN, General Assembly, *Universal Declaration of Human Rights*, adopted on December 10, 1948, Article 9; UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on November 30, 1979, Article 9; OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 1 and 25.

⁵⁷ I/A Court H.R., *Case of Díaz-Peña v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 26, 2012. Series C No. 244, para. 135.

⁵⁸ I/A Court H.R., *Case of Díaz-Peña v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 26, 2012. Series C No. 244, para. 135.

⁵⁹ UN, General Assembly, *International Covenant on Civil and Political Rights*, ratified by El Salvador on Novem-

“states must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”⁶⁰ These obligations include taking preventive measures to protect those vulnerable to attacks by state agents or third persons,⁶¹ because torture violations are compounded by arbitrary detention.⁶²

Access to Justice and Impunity

Access to justice is a fundamental element of the effective rule of law.⁶³ El Salvador has an obligation to exercise due diligence⁶⁴ in the prevention, investigation, punishment, and redress of human rights violations committed against its citizens.⁶⁵ The UDHR and the ICCPR require states to ensure effective access to justice for all citizens.⁶⁶ Regionally, the American Convention

ber 30, 1979, Article 10; OAS, *American Convention on Human Rights*, ratified by El Salvador on June 20, 1978, Article 5.

⁶⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 132 (quoting OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, para. 15).

⁶¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 146.

⁶² I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, para. 126: “the risk of torture is particularly high when a person is unlawfully and clandestinely detained”; I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57: “The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance (cf. Eur. Court H.R., *Case of Ireland v. the United Kingdom*. Judgment of 18 January 1978. Series A no. 25, para. 167). That situation is exacerbated by the vulnerability of a person who is unlawfully detained (cf. Eur. Court HR, *Ribitsch v. Austria*. Judgment of 4 December 1995. Series A no. 336, para. 36).”

⁶³ United Nations and the Rule of Law, *Access to Justice*, available at: <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>, accessed on March 24, 2017.

⁶⁴ Due diligence includes taking steps to investigate discriminatory motives and ensure that crimes based on sexual orientation or gender identity investigated. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 501-508.

⁶⁵ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 385.

⁶⁶ The Universal Declaration of Human Rights provides for the right to equality before the law without discrimination, equal protection of the law, and the right to an effective remedy by competent tribunals. UN, General Assembly, *Universal Declaration of Human Rights*, 1948, Art. 7, 8. Furthermore, the International Covenant on Civil and Political Rights, which El Salvador is a party to, establishes that states are bound to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy....” UN, General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966, Art. 2 (adopted Dec. 16, 1966, entered into force Mar. 23, 1976). The Human Rights Committee has stated that Article 2(3) of the ICCPR “requires that in addition to effective protection of Convention rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights.” Furthermore, Article 14 and Article 26 of

guarantees access to legal recourse and protects the right to a fair trial.⁶⁷ The IACHR has stated that the obligation of a state to “prevent, investigate, punish, and provide reparations” for human rights violations extends to acts of violence based on a person’s sexual orientation or gender identity.⁶⁸

El Salvador’s obligations to prevent, investigate, punish, and redress human rights violations are wide ranging. The IACHR has emphasized that these obligations include a requirement to adopt all legal, political, administrative, and cultural changes necessary to ensure that violations of the human rights of LGBT people are addressed.⁶⁹ El Salvador’s duty to ensure access to justice begins with diligent investigation.⁷⁰ This duty is especially important when the violation was, or might have been, committed by, or with the aid of, state officials.⁷¹ All investigations should be serious, impartial, thorough, and effective.⁷² They should not rely on the impetus of the victim, or their next of kin, but should be initiated by the State itself.⁷³

the ICCPR provide for equality before the law, under the law, and equal protection of the law and benefit of the law. This includes both formal and substantive equality. UN, ‘*General Comment No. 31*’, Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004), para. 15.

⁶⁷ OAS, *American Convention on Human Rights*, “*Pact of San Jose*,” Costa Rica, 22 November 1969, Art. 8, 25.

⁶⁸ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 384.

⁶⁹ The UN High Commissioner for Human Rights mandates: “taking legislative and other measures to prohibit, investigate, and prosecute all acts of violence, and incitement to violence, motivated by prejudice and directed at LGBTI persons; providing remedies to victims and protection against reprisals; publicly condemning such acts of violence; and recording statistics of such crimes and the outcomes of investigations, prosecutions, and remedial measures.” Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 385, fn. 1110 (citing OHCHR, *Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity*, A/HRC/29/23, May 4, 2015, para. 11). The IACHR has urged a similar measure: “establishing data collection mechanisms to study and assess the extent and tendencies of these types of violence; enacting legal provisions criminalizing violence based on prejudice against non-normative sexual orientations and gender identities, as well as against bodily diversity; pursuing community-based prevention; and designing and implementing comprehensive public education policies and programs to eradicate stereotyping and stigmatization of LGBTI persons.” Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 391.

⁷⁰ While this obligation is one of means rather than results, states “must not treat it as a mere formality, preordained to be ineffective.” Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 299.

⁷¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 438 (“States need to ensure that their justice systems are able to fully and effectively investigate all instances of police abuse and all instances of torture, and cruel, inhuman, or degrading treatment.”); Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 499.

⁷² Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 499.

⁷³ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 499.

Access to justice includes the right to an effective judicial remedy.⁷⁴ The IACHR has described this as a victim's right "to obtain a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation."⁷⁵ The IACtHR affirmed that states must ensure that "victims or their next of kin have full access and legal standing at all the stages of the investigation and prosecution of those responsible."⁷⁶ These obligations apply to "justice operators," all State officials who administer the justice system, and must be available both *de jure* and *de facto*.⁷⁷

To satisfy its international obligations to respect and protect human rights, El Salvador must ensure that appropriate reparations are provided for all human rights violations.⁷⁸ These measures should be "calculated to provide adequate restitution, compensation, and rehabilitation for the victims."⁷⁹

For El Salvador to live up to its obligation to prevent and combat impunity under the Inter-American System, it must implement the access to justice measures stipulated above. Impunity is defined as "an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights."⁸⁰ The IACtHR has stated that if "the State apparatus

⁷⁴ The IACHR has specified that access to "a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation" must be available by law and in practice. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 448 (quoting Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, 2011, para. 22; citing Inter-American Commission on Human Rights, Report No. 5/96, Case 10.970, Merits, *Raquel Martin de Mejia*, Peru, Mar. 1, 1996, p. 22.)

⁷⁵ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 458.

⁷⁶ In the case of transgender women this may fall to the deceased victim's "social family." Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 511. I/A Court H.R., *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 174.

⁷⁷ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 470. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 458.

⁷⁸ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 459.

⁷⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 512.

⁸⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 475.

‘acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the rights of those subject to its jurisdiction.’⁸¹ Failure to prevent and combat impunity fosters repetition, implies that the acts are acceptable, and increases victim’s mistrust of the State, creating a cyclical function whereby impunity raises the likelihood of future violations.⁸²

DOMESTIC LAW

Salvadoran Constitution

The Constitution of El Salvador guarantees equal protection of the laws⁸³ and certain fundamental rights, including life, physical and moral integrity, liberty,⁸⁴ security, work, property, honor, and personal and family intimacy.⁸⁵ Under Article 3, civil rights may not be denied on the basis of nationality, race, sex, or religion;⁸⁶ in light of international treaties, the Supreme Court has interpreted this non-discrimination provision to cover sexual orientation.⁸⁷ More generally, the article prohibits arbitrary differentiation, a distinction made in law or policy without reasonable justification.⁸⁸

Salvadoran Legislation

Amendment to the Salvadoran Criminal Code

A 2015 amendment to the Salvadoran Criminal Code increased penalties for homicide and verbal assault motivated by prejudice against the victim’s sexual orientation or gender identity or expression.⁸⁹ Homicides are subject to penalties of 20-25 or 25-30 years, depending on

⁸¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 475. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1.

⁸² Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 476.

⁸³ Constituent Assembly; Constitution of the Republic of El Salvador; article 3. Translation by Marcia W. Coward, Milagros M. Gavilan and Reka Koerner, available at: https://www.constituteproject.org/constitution/El_Salvador_2014?lang=en; accessed on March 24, 2017.

⁸⁴ The right to liberty is also enshrined in articles 4, 8, and 9 of the Constitution of El Salvador.

⁸⁵ Constituent Assembly; Constitution of the Republic of El Salvador; article 2. Translation by Marcia W. Coward, Milagros M. Gavilan and Reka Koerner, available at: https://www.constituteproject.org/constitution/El_Salvador_2014?lang=en; accessed on March 24, 2017.

⁸⁶ Constituent Assembly; Constitution of the Republic of El Salvador; article 3. Translation by Marcia W. Coward, Milagros M. Gavilan and Reka Koerner, available at: https://www.constituteproject.org/constitution/El_Salvador_2014?lang=en; accessed on March 24, 2017.

⁸⁷ Constitutional Chamber of the Supreme Court of El Salvador; 18-2004; December 9, 2009; Section V.1.

⁸⁸ Constitutional Chamber of the Supreme Court of El Salvador; 17-95; December 14, 1995; Section X.

⁸⁹ Hate crime legislation also applies to acts motivated by racial, ethnic, religious, or political prejudice. Legisla-

aggravating factors; those prosecuted as hate crimes are eligible for prison terms of 20-30 or 30-50 years.⁹⁰ Assault sentences, which normally run from one to four years, are increased by up to one third if prosecuted as hate crimes.⁹¹ These increased penalties do not apply to other crimes, such as battery and rape.

Law for a Life Free of Violence for Women

This statute recognizes and ensures a woman's right to a life free from violence; it institutionalizes policies intended to prevent, prosecute, and punish violence against women, but contains no explicit protections based on sexual orientation or gender identity.⁹² It defines several crimes against women, including femicide and expressions of violence against women,⁹³ but ignores physical abuse. It defines institutional violence as an act or omission by any public servant that discriminates against or has the purpose of delaying or impeding the enjoyment of women's rights and freedoms, but establishes no sanctions.⁹⁴

Executive

On May 4th, 2010, then-President Mauricio Funes enacted Presidential Decree No. 56,⁹⁵ ordering all public offices and agencies in his administration to abstain from any activity, policy, action, or omission resulting in discrimination against any person on the basis of sexual orientation or gender identity.⁹⁶ All heads of public offices were required to review their policies, programs, and projects and adopt any necessary modifications to prevent direct or indirect discrimination on the basis of sexual orientation or gender identity.⁹⁷

tive Assembly of El Salvador; decree No. 106 – Amendments to the Criminal Code; September 3, 2015; articles 1 and 2.

⁹⁰ Legislative Assembly of El Salvador; decree No. 106 – Amendments to the Criminal Code; September 3, 2015; articles 1 and 2; Penal code art. 129, <http://unpan1.un.org/intradoc/groups/public/documents/icap/unpan030692.pdf>.

⁹¹ Penal code art. 153-155, <http://unpan1.un.org/intradoc/groups/public/documents/icap/unpan030692.pdf>.

⁹² Legislative Assembly of El Salvador; Decree 520 – Law for a Life Free of Violence Life for Women; December 14, 2010; article 1.

⁹³ Legislative Assembly of El Salvador; Decree 520 – Law for a Life Free of Violence Life for Women; December 14, 2010; at articles 45 and 55.

⁹⁴ IACHR, Press Release No. 23A/2013, *Annex to the Press Release issue at the Close of the 147th Session*, April 5, 2013; at 10.a.

⁹⁵ The President of El Salvador is empowered by article 163 of the Constitution to issue presidential decrees within the limits demarked by the Constitution. Constituent Assembly of El Salvador; Constitution of El Salvador; article 163.

⁹⁶ Presidential Decree 56 (2010); Dispositions to avoid all forms of discrimination in the public administration based on gender identity and/or sexual orientation; May 4th 2010.

⁹⁷ Presidential Decree 56 (2010); Dispositions to avoid all forms of discrimination in the public administration based on gender identity and/or sexual orientation; May 4th 2010, Art. 3.

The decree has limited application due to its status under Salvadoran law. It only applies to executive branch agencies and public officers. Furthermore, there are no sanctions or legal consequences to public servants that refuse to follow the decree.

LGBT Specific State Initiatives

Secretariat of Social Inclusion – Directorate of Sexual Diversity

The Secretariat of Social Inclusion, an office in the executive branch, is charged with: promoting social inclusion, eliminating all forms of discrimination, advancing human rights policies, and advising the president on non-discrimination and inclusion.⁹⁸ The Directorate of Sexual Diversity, located within the Secretariat, aims to eliminate discrimination by increasing awareness and understanding of the LGBT community, advancing pro-LGBT public policies, and creating environments free from LGBT-phobia.⁹⁹ Dr. Vanda Pignato, the current Secretary of Social Inclusion and former first lady of El Salvador, launched a 24-hour hotline that is intended to provide counselling to LGBT people.¹⁰⁰

Permanent Roundtable on Human Rights of LGBT Population

The Office of the Human Rights Ombudsperson¹⁰¹ supervises the fulfillment of human rights obligations in El Salvador, particularly with respect to executive action. The Ombudsperson is empowered to advance legal and other forms of recourse to protect human rights.¹⁰² In order to pursue this mandate, the office hosts the Permanent Roundtable on Human Rights of the LGBTI population, which brings civil society organizations and activists together to devise and advance an agenda that will facilitate the enjoyment of fundamental rights by the LGBTI population.¹⁰³

⁹⁸ Council of Ministers of El Salvador; Internal Rules of the Executive Branch; April 18th, 1989 Arts. 53-A and 53-B.

⁹⁹ Secretariat of Social Inclusion / Directorate of Sexual Diversity website; available at <http://www.inclusion-social.gob.sv/diversidad-sexual/>; accessed on October 15, 2016.

¹⁰⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 430. Research Directorate of the Immigration and Refugee Board of Canada; *El Salvador: Information Gathering Mission Report - Part 2. The Situation of Women Victims of Violence and of Sexual Minorities in El Salvador*; section 5.5.2.

¹⁰¹ Established by article 194.I of the Salvadoran Constitution and Legislative Decree 183 in 1992. Constituent Assembly of El Salvador, Constitution of El Salvador, article 194.I; Legislative Assembly of El Salvador; decree no. 183 – *Ley de la Procuraduría de los Derechos Humanos* (Ombudsperson's Office Law); February 20, 1992.

¹⁰² Legislative Assembly of El Salvador; decree no. 183 – *Ley de la Procuraduría de los Derechos Humanos* (Ombudsperson's Office Law); February 20, 1992; article 11.3. Constituent Assembly of El Salvador; Constitution of El Salvador; article 194.I.4.

¹⁰³ The I in the acronym LGBTI stands for intersex persons. Intersex is a broad term that refers to persons who are born with variations—genetic, hormonal, or anatomical—that do not correspond to the culturally defined standard of male or female gender. This report did not document violations of the rights of intersex Salvadorans. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 17; Ombudsperson's Office press release available at <http://www.pddh.gob.sv/menupress/menunoti/316-pddh-lanza-mesa-permanente-sobre-derechos-humanos-de-la-poblacion-lgbti>, accessed on October 15, 2016

Use of Military in Law Enforcement

The Chapultepec Agreement, which brought an end to the Salvadoran Civil War in 1992, set forth the principles that govern the Salvadoran armed forces in peacetime. The mission of the military is to “defend the sovereignty of the State and the integrity of its territory” from external threat;¹⁰⁴ the Agreement deems “security” outside the constitutional competence of the armed forces.¹⁰⁵ The military are to play a role in law enforcement “only in very exceptional circumstances, where the normal means have been exhausted.”¹⁰⁶ In all its endeavors, armed forces operations must “be consistent with the principles deriving from the rule of law, the primacy of the dignity of the human person and respect for human rights.”¹⁰⁷ The training of members of the armed forces must “emphasize the pre-eminence of human dignity and democratic values” and “respect for human rights.”¹⁰⁸

The President is empowered under article 168, section 12 of the Salvadoran Constitution to deploy the armed forces “for the maintenance of internal peace, tranquility and public safety”; (i) in “exceptional” circumstances; (ii) when the “ordinary means” for maintaining security have been exhausted; (iii) the use of the armed forces must be “limited to the time and to the extent strictly necessary for the restoration of order and shall cease as soon as that task has been achieved”; and (iv) the President must keep the Legislative Assembly informed of executive actions.¹⁰⁹ President Funes invoked this provision in Executive Decree No. 60 in September 2009 to establish joint PNC and military patrols for “prevention, deterrence and apprehension of criminals throughout the national territory.”¹¹⁰ The decree was renewed for the ninth time in December 2016, extending its validity through December 31, 2017.¹¹¹

¹⁰⁴ Chapultepec Agreement, Ch.1, Sec. 1, Para. A; similar language appears in the Salvadoran Constitution, Art. 212.

¹⁰⁵ Chapultepec Agreement, Ch.1, Sec. 1, Para. E.

¹⁰⁶ Chapultepec Agreement, Ch.1, Sec. 1, Para. F.

¹⁰⁷ Chapultepec Agreement, Ch.1, Sec. 1, Para. B.

¹⁰⁸ Chapultepec Agreement Ch.1, Sec. 2.

¹⁰⁹ Salvadoran Constitution, Art. 168, Sec. 12.

¹¹⁰ Executive Decree No. 60 (Sep 2009).

¹¹¹ Executive Decree No. 60 (Sep 2009) as amended by Executive Decree No. 68 (Dec 2016).

CONTEXT & BACKGROUND

SITUATION OF VIOLENCE FOR ALL SALVADORANS

“We are supposed to be celebrating the peace, but what peace?”

– Mónica Hernández, on the 25th anniversary of the signing of the peace accords.¹¹²

For twelve years following El Salvador’s 1979 coup,¹¹³ the military junta, aided by the United States government,¹¹⁴ fought against populist guerilla forces in a civil war that ultimately claimed over 75,000 lives.¹¹⁵ The civil war was marked by institutional violence fueled by impunity that persisted as the military junta employed scorched-earth policies against the leftist guerillas and anyone they thought might support them.¹¹⁶ At the end of the war, the Truth Commission for El Salvador reported that almost 85% of the 22,000 complaints they received were attributed to State agents, allied paramilitary groups, and death squads, with Armed Forces personnel accused in almost 60% of complaints.¹¹⁷ Military officers were implicated in human rights violations ranging from large-scale massacres¹¹⁸ to forced disappearances of children.¹¹⁹ With assistance from the United Nations, the Salvadoran government and the leftist coalition signed the Peace Accords, resulting in a reduction of the role of the armed forces and the creation of a civilian police force (the PNC).¹²⁰

¹¹² Interview with Mónica Hernández, San Salvador, Jan. 11, 2017 (*Estamos celebrando los 25 años de los acuerdos de paz, pero ¿de qué paz podemos hablar?*)

¹¹³ The Truth Commission for El Salvador, “From Madness to Hope, the 12-Year War in El Salvador,” Apr. 1, 1993, available at: <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>, accessed on March 24, 2017.

¹¹⁴ I/A Court H.R., *Case of Contreras Et. Al. v. El Salvador*, Merits, Reparations, and Costs, Judgment of Aug. 31, 2011, Series C No. 232, para. 44, available at: <http://hrlibrary.umn.edu/iachr/C/232-ing.pdf>, accessed on March 24, 2017.

¹¹⁵ I/A Court H.R., *Case of Contreras Et. Al. v. El Salvador*, Merits, Reparations, and Costs, Judgment of Aug. 31, 2011, Series C No. 232, para. 41, available at: <http://hrlibrary.umn.edu/iachr/C/232-ing.pdf>, accessed on March 24, 2017.

¹¹⁶ Kevin Murray, “El Salvador: Peace on Trial,” Oxfam (1997), pp. 13-15.

¹¹⁷ The Truth Commission for El Salvador, “From Madness to Hope, the 12-Year War in El Salvador,” Apr. 1, 1993, available at: <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>, accessed on March 24, 2017.

¹¹⁸ I/A Court H.R., *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Merits, Reparations, and Costs. Judgment of Oct. 25, 2012. Series C No. 252, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf, accessed on March 24, 2017.

¹¹⁹ I/A Court H.R., *Case of the Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations, and Costs. Judgment of Mar. 1, 2005. Series C No. 120, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_120_ing.pdf, accessed on March 24, 2017.

¹²⁰ Chapultepec Agreement, Ch.1, Sec. 4, and Ch. 2, Sec. 7, Para B.

Twenty-five years later, El Salvador is plagued by conflict of a different kind. The country has one of the highest homicide rates in the world.¹²¹ Violence is the leading cause of death among Salvadoran women between fifteen and forty-four years old.¹²² Much of this violence can be attributed to gangs or to the security and paramilitary forces fighting them.

During the post-war era, expatriate gang members deported back to El Salvador by the United States brought the organization and skills necessary to consolidate gangs and attain significant power.¹²³ In response, the government expanded the law enforcement authority of both civilian and military forces as part of the *Mano Dura* (“firm hand”) anti-gang policies. While the 1992 peace accords envisioned a traditional distinction between the military and the police force,¹²⁴ the Constitution allows the president to employ the military in internal law enforcement in extreme situations.¹²⁵ Beginning in 2009, then President Funes exercised these powers through Executive Decree No. 60, since renewed nine times by himself and his successor, President Salvador Sánchez Cerén.¹²⁶ Several renewals have included amendments expanding the military’s police functions. Today, soldiers are primarily employed in joint PNC/military patrols in areas of high gang activity and are also responsible for the external security of many of El Salvador’s prisons.¹²⁷

Executive Decree No. 60 resulted in a dramatic rise in the number of soldiers engaged in law enforcement, from approximately 1,975 in 2008 to 6,500 in 2009.¹²⁸ As more soldiers were deployed in internal policing between 2009 and 2011, complaints filed against members of the military increased by 537%.¹²⁹ By September 2015, 7,900 soldiers were carrying out police

¹²¹ U.S. Dept. of State, El Salvador Country Information, available at: <https://travel.state.gov/content/passports/en/country/el-salvador.html>, accessed on March 24, 2017.

¹²² University of California, Berkeley, *Sexual Diversity in El Salvador: A Report on the Human Rights Situation of the LGBT Community*, July 2012, p. 13, available at: https://www.law.berkeley.edu/files/IHRLC/LGBT_Report_English_Final_120705.pdf, accessed on March 24, 2017.

¹²³ USAID, Central America and Mexico Gang Assessment, April 2006, p.45, available at: http://pdf.usaid.gov/pdf_docs/PNADG834.pdf, accessed on March 24, 2017.

¹²⁴ Chapultepec Agreement, Ch.1, Sec. 1, Para. A.

¹²⁵ Salvadoran Constitution, Art. 168, Sec. 12.

¹²⁶ Executive Decree No. 60, Sep. 2009.

¹²⁷ Executive Decree No. 60, Sep 2009, as amended by Executive Decree No. 68, Dec 2016, article 1.

¹²⁸ Jeannette Aguilar, *El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente*, p. 76, available at: <http://www.uca.edu.sv/iudop/wp-content/uploads/Jeannette-Aguilar-2016-64-86.pdf>, accessed on March 24, 2017.

¹²⁹ Jeannette Aguilar, *El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente*, p. 77, available at: <http://www.uca.edu.sv/iudop/wp-content/uploads/Jeannette-Aguilar-2016-64-86.pdf>, accessed on March 24, 2017.

functions,¹³⁰ along with approximately 23,000 police officers.¹³¹ The Ombudsperson's Office (PDDH) reported that 68% of the human rights complaints they received between June 2015 and May 2016 were committed by the PNC or the military.¹³²

Given the atmosphere of heightened violence, prevalence of organized crime, and 94% impunity rate for homicides, Salvadoran authorities often explain the violence experienced by LGBT people as commensurate with the experience of the heterosexual, cisgender general population.¹³³ It is impossible, with current data, to say with certainty whether this is true. However, virtually every LGBT person interviewed reported instances of violence perpetrated against them by state and/or private actors. Murders of LGBT people are often marked by a level of brutality that reveals the hate and dehumanization motivating the crimes. These homicides are characterized by signs of torture, including severe beating, dismemberment, multiple stab wounds, and multiple gunshots.¹³⁴ Lesbian, gay, bisexual, and transgender interviewees told researchers they live in a constant state of fear, worrying about when the next threat will arise.¹³⁵ In 2014 and 2015, 60 LGBT people left the country to escape violence; in the first three months of 2017, fueled by the murders of three transgender women, 29 LGBT people have fled El Salvador.¹³⁶

¹³⁰ Nelson Rauda Zablah, *Los soldados, hartos, incumplen la orden de guardar silencio*, El Faro, Sept. 28, 2015, available at: <http://www.elfaro.net/es/201509/noticias/17397/Los-soldados-hartos-incumplen-la-orden-de-guardar-silencio.htm>, accessed on March 24, 2017.

¹³¹ Roberto Valencia, *Casi que Guardia Nacional Civil*, El Faro, Oct. 3, 2016, available at: <http://www.elfaro.net/es/201610/salanegra/19277/Casi-que-Guardia-Nacional-Civil.htm>, accessed on March 24, 2017.

¹³² *El Salvador 2016 Human Rights Report, Country Reports on Human Rights Practices for 2016*, United States Department of State, Bureau of Democracy, Human Rights and Labor, p. 8.

¹³³ Roque Planas, *How El Salvador Became the World's Most Violent Peacetime Country*, WorldPost, Mar. 4, 2016, available at: http://www.huffingtonpost.com/entry/el-salvador-most-violent-country_us_56d9e239e4b0000de4047fbc, accessed on March 24, 2017. Government interviewees reminded researchers that the generalized levels of violence contribute to victimization of all Salvadorans, including those who identify as LGBT.

¹³⁴ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

¹³⁵ Interviews with Victor Manuel, pseudonym, Jan. 10, 2017; Kelvin, pseudonym, Jan. 12, 2017.

¹³⁶ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

DISCRIMINATION AGAINST LGBT SALVADORANS IN ALL ASPECTS OF LIFE

“As transgender women we have no way of fighting back. Without access to healthcare, education, or work, it’s as if they cut off our arms and legs.”

– Graciela, a transgender woman¹³⁷

While the government has made some advances in the last few years to address discrimination and violence faced by LGBT people, including the hate crimes amendment to the Criminal Code, Presidential Decree No. 56, the establishment of the Directorate for Sexual Diversity, and the Permanent Forum for Human Rights for the LGBT Population, these initiatives either lack enforcement mechanisms or satisfactory implementation. As one transgender woman put it, “I feel like the government is a group that wants to put down the whole LGBT community. They want to act like we don’t exist, but we do exist.”¹³⁸

LGBT Salvadorans often have difficulties accessing the healthcare services they need. LGBT people have reported that, once their gender identity or sexual orientation is known, they are forced to wait for long periods of time before receiving care, or are denied treatment outright.¹³⁹ For transgender persons, discrimination occurs when medical personnel refuse to call them by their names and insist on using the mis-gendered name printed on their identification documents.¹⁴⁰ Because of their exclusion from the healthcare system, transgender persons in El Salvador cannot safely access hormone treatment, so some resort to risky self-medication to change their appearance.¹⁴¹ For lesbian women, gynecological services can be difficult to access because doctors refuse to treat them, telling them they do not need any care because they do not have sex with men.¹⁴² In extreme cases, lesbian women have experienced sexual abuse while attempting to access healthcare.¹⁴³

¹³⁷ Interview with Graciela, pseudonym, San Salvador, Jan. 10, 2017. (*Aquí en el país las mujeres transgénero no tenemos como poder luchar, se nos cierran muchas puertas. No tener acceso a la salud, a la educación, no tener acceso al trabajo es como si nos cortan los brazos y las piernas.*)

¹³⁸ Interview with Graciela, pseudonym, San Salvador, Jan. 10, 2017. (*Creo que el gobierno es un conjunto en el cual se proponen que las personas LGBT no crezcamos. Nos quieren hacer como que no existimos. Mas sin embargo sí existimos.*)

¹³⁹ University of California, Berkeley, *Sexual Diversity in El Salvador: A Report on the Human Rights Situation of the LGBT Community*, July 2012, p. 26, available at: https://www.law.berkeley.edu/files/IHRLC/LGBT_Report_English_Final_120705.pdf, accessed on March 24, 2017.

¹⁴⁰ Interview with Maybel, pseudonym, San Salvador, Jan. 11, 2017.

¹⁴¹ Interviews with Maybel, pseudonym, San Salvador, Jan. 11, 2017; Rafael Isidoro, pseudonym, San Salvador, Jan. 9, 2017.

¹⁴² Interview with Wendy Castillo, San Salvador, Jan. 9, 2017.

¹⁴³ Interview with Andrea Ayala, San Salvador, Jan. 10, 2017

Discrimination against LGBT people in the Salvadoran education system takes many forms. Interviewees reported being formally or constructively prevented from attending all levels of schooling.¹⁴⁴ Many faced discrimination by teachers and administrators, including being expelled, being coerced into wearing clothing that correlated to their sex assigned at birth, and only being permitted to participate in night school.¹⁴⁵ Ambar Alfaro, a transgender woman who attended the National Institute for Off-campus Education of Colonia Miramar, ultimately withdrew from her studies due to the discrimination she faced.¹⁴⁶ An Institute professor insisted on identifying Ambar by the male name in her identification document,¹⁴⁷ and the director told her she would not be allowed to graduate unless she adopted a more masculine appearance in her school picture.¹⁴⁸ Victor Manuel, a transgender gay man, was forced to quit medical school after he was seen with his partner and then began receiving death threats.¹⁴⁹

Without access to education, LGBT people in El Salvador are precluded from pursuing employment in their field of choice. Those who support themselves through alternative or informal means, including street vending and sex work, are more exposed to law enforcement, gangs, and other perpetrators of violence.¹⁵⁰ In a 2013 Inter-American Commission on Human Rights (IACHR) hearing, civil society organizations (CSOs) reported that three transgender women who engaged in sex work were abducted and murdered.¹⁵¹ Barriers to entering the formal labor market are particularly high for transgender women. As one interviewee explained, “They offer you three jobs as a transgender woman: working at the grocery store, as a hairdresser, and as a sex worker.”¹⁵²

¹⁴⁴ Interviews with Patricia, pseudonym, San Salvador, Jan. 9, 2017; Daniela, pseudonym, San Salvador, Jan. 10, 2017; Emilia, pseudonym, San Salvador, Jan. 9, 2017; Natalia, pseudonym, San Salvador, Jan. 9, 2017; Victor Manuel, pseudonym, San Salvador, Jan. 10, 2017.

¹⁴⁵ Attending school at night increases the chance that an individual will become a victim of a crime. In some places in the country, gangs have instituted a curfew for those living in areas they control.

¹⁴⁶ American University Washington College of Law, *Human Rights Violations Against Transgender Persons In El Salvador, List of Issues Submitted to the United Nations Office of the High Commissioner for Human Rights*, February 2015 at p. 11.

¹⁴⁷ American University Washington College of Law, *Human Rights Violations Against Transgender Persons In El Salvador, List of Issues Submitted to the United Nations Office of the High Commissioner for Human Rights*, February 2015 at p. 11.

¹⁴⁸ American University Washington College of Law, *Human Rights Violations Against Transgender Persons In El Salvador, List of Issues Submitted to the United Nations Office of the High Commissioner for Human Rights*, February 2015 at p. 11.

¹⁴⁹ Interview with Victor Manuel, pseudonym, San Salvador, Jan. 10, 2017.

¹⁵⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, p. 160, para. 281.

¹⁵¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, p. 160, para. 281.

¹⁵² Interview with Deisy, San Salvador, Jan. 10, 2017. (*Como mujer trans te ofrecen tres trabajos: trabajar en el mercado, como estilista, y realizar trabajo sexual.*)

Those who manage to secure stable employment find it difficult to keep. Daniela, a transgender woman trained as a nurse, was fired from two jobs after her former employers complained that her identity made patients uncomfortable.¹⁵³ There are no laws in El Salvador that prohibit employment discrimination against individuals based on their sexual orientation or gender identity.¹⁵⁴

ALEX PEÑA¹⁵⁵

“I need justice. I want the officers who did this to be jailed so people know hate crimes will be punished.”

– Alex Peña¹⁵⁶

One of the most well-known cases of violence inflicted by Salvadoran law enforcement against a member of the LGBT community is that of Alex Peña. Alex is a transgender man, a Municipal Police (CAM) officer, and an activist in the LGBT community. In June 2015, on his way home from a pride celebration, Alex exchanged heated words with a bus driver. The driver stopped near a police station and called over officers standing outside. When Alex got off the bus, he was confronted by seven National Police (PNC) officers, some of whom were off-duty. They put Alex in a headlock and beat him, kicking him repeatedly in the head and ribs. Eventually, eight more officers joined the attack, which left Alex unconscious with a fractured eye-socket and jaw. The officers moved him into the station, holding him on the pretence that he had assaulted an officer. They left Alex face down on the floor, handcuffed and with his feet tied together.

Once he regained consciousness, the police stood on his head and began kicking him in the ribs, yelling, “Don’t you say you’re a man?”¹⁵⁷ Alex begged them to leave him alone because he “felt like [he] was going to pass out again.”¹⁵⁸ They told him, “You’re going to die here, you son of a bitch.

¹⁵³ Interview with Daniela, pseudonym, San Salvador, Jan. 10, 2017.

¹⁵⁴ American University Washington College of Law, *Human Rights Violations Against Transgender Persons In El Salvador, List of Issues Submitted to the United Nations Office of the High Commissioner for Human Rights*, February 2015 at p. 15.

¹⁵⁵ Interview with Alex Peña, San Salvador, Jan. 13, 2017. Unless otherwise sourced, all information in this section is from this interview.

¹⁵⁶ Nina Lakhani, *LGBT in El Salvador: Beatings, intolerance, death*, Al Jazeera, Aug. 12, 2015, available at: <http://www.aljazeera.com/indepth/features/2015/08/lgbt-el-salvador-beatings-intolerance-death-150805075132892.html>, accessed on March 24, 2017.

¹⁵⁷ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*¿No decis que sos hombre, pues?*)

¹⁵⁸ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*Les empecé a suplicar porque sentía que me iba a desmayar.*)

Tomorrow you're going to be another death by the gangs."¹⁵⁹ One officer repeatedly pulled him up by his hair and asked him whether he was a man; whatever his response, the officer smashed his face against the floor. Alex "had no hope at that point. I felt there was no hope left. But the last thing they saw of me was not going to be me begging for anything."¹⁶⁰

As news spread of Alex's detention, several LGBT activists rushed to the police station.¹⁶¹ From where they stood, they could see him swaying back and forth, struggling to stay conscious.¹⁶² Villy Rivera, Karla Avelar, and William Hernández identified themselves as LGBT human rights defenders and friends of Alex and demanded to speak to him.¹⁶³ The officer in charge said he did not care who they were or what work they did, and told them to leave.¹⁶⁴

When senior officials from the Human Rights Ombudsperson's Office (PDDH) and the PNC arrived and told the police to take Alex to the hospital, they loaded him in the back of a police pickup truck.¹⁶⁵ Despite an officer's threat to shoot up their car, Alex's friends followed.¹⁶⁶ They watched as the police continued to beat Alex, driving so erratically that his body was bouncing above the sides of the truck bed.¹⁶⁷ An officer told Alex, "because of your faggot friends it's going to be worse for you."¹⁶⁸

The same police officers who beat and abused Alex were responsible for guarding him at the hospital. Doctors treated his broken jaw, fractured eye socket, and other serious injuries with surgery, prescription antibiotics, and pain medication. Under police pressure, the hospital discharged Alex the following morning.¹⁶⁹ The police transported him to a detention center, but refused to disclose Alex's location to his friends or the human rights officials.¹⁷⁰ He was held in jail for several more days without access to the antibiotics and pain medications he had been prescribed. Even after a month of recovery, Alex had bloodshot eyes, difficulty eating solids, and painful neck spasms.¹⁷¹

¹⁵⁹ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*Me decían: "Aquí te vas a morir, hijo de puta. Mañana sos una muerte más de los pandilleros."*)

¹⁶⁰ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*Esperanza ya no tenía. Yo sentía que ya no había esperanza. Y que lo último que ellos vieran de mí, no me iban a ver suplicarles nada.*)

¹⁶¹ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶² Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶³ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶⁴ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶⁵ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶⁶ Interviews with Villy Rivera, San Salvador, Jan. 12, 2017; Karla Avelar, San Salvador, Jan. 10, 2017.

¹⁶⁷ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁶⁸ Interview with Villy Rivera, San Salvador, Jan. 12, 2017. (*Por culpa de esos tus amigos culeros te va a ir peor.*)

¹⁶⁹ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁷⁰ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

¹⁷¹ Interview with Alex Peña, San Salvador, Jan. 13, 2017; Nina Lakhani, *LGBT in El Salvador: Beatings, intolerance, death*, Al Jazeera, August 12, 2015, available at: <http://www.aljazeera.com/indepth/features/2015/08/lgbt-el-salvador-beatings-intolerance-death-150805075132892.html>, accessed on March 24, 2017.

A few days after he was brutally beaten, Alex appeared at a hearing on charges that he had assaulted one of the offending officers. Even the judge found it “laughable” that Alex, visibly injured and confined to a wheelchair, was being accused of perpetrating a crime against an unscathed “victim.”¹⁷² However, the public defender assigned to Alex’s case pushed him to accept a plea deal and admit guilt. The attorney told him that if the prosecutors had let the case go this far, they probably did not believe his story, which did not bode well for his case against the police. Undeterred, Alex persisted and was acquitted of the charges.

Alex’s acquittal cleared the way for his case against the officers, which began in November 2016. After an investigation by the police disciplinary unit, the PNC referred the case to the *Fiscalía* (public prosecutor’s office) for further investigation and possible indictment. FESPAD, a legal aid provider representing Alex, met with prosecutors who told the organization they had been ordered to “file”—or shelve—the case.¹⁷³ Alex had to threaten a lawsuit to pressure the *Fiscalía* to pursue charges. He continued to face resistance from the attorneys responsible for seeking justice on his behalf: one asked, “[w]hy are you going to convict police officers to defend faggots?”¹⁷⁴ Attorneys from FESPAD had to supervise every step of the officers’ trial because the prosecutors intentionally, or negligently, failed to introduce crucial evidence.¹⁷⁵

Of the roughly 15 officers involved in brutally beating and detaining Alex, charges were filed against the seven that Alex could recognize. A judge dismissed charges against three in the first stage and one was acquitted. Two of the remaining three officers were convicted and sentenced. The main perpetrator and instigator of the attack escaped prosecution when the *juez de información* (information judge) left his name off charging documents in the second stage of the case.¹⁷⁶ Charges against him are still pending in the (*Fiscalía*); he remains employed by the PNC.¹⁷⁷

Alex’s story is severe, but all too common. Lesbian, gay, bisexual, and transgender people are routinely harassed and physically abused by law enforcement officers. Unfortunately, few victims achieve any kind of justice or redress. Because of the support of human rights defenders and sympathetic government officials, Alex survived and was able to hold some of his attackers accountable. His case is the only example identified by government officials of a successful prosecution of a hate crime committed by law enforcement against an LGBT person.

¹⁷² Interview with Villy Rivera, San Salvador, Jan. 12, 2017. (*El juez dijo que era “risible estar viendo a ustedes los ofendidos, y a usted que es el agresor, y aquí al que veo más golpeado es él.*)

¹⁷³ Interview with FESPAD, San Salvador, Jan. 12 2017. (*Miren, yo tengo órdenes de mi jefe de archivar este proceso.*)

¹⁷⁴ Interview with FESPAD, San Salvador, Jan. 12, 2017. (*¿Por qué va a andar condenando policías por culeros?*)

¹⁷⁵ Interview with FESPAD, San Salvador, Jan. 12, 2017.

¹⁷⁶ The *juez de información* (information judge) refused to call Alex by his name, referring to him by the female name on his ID. The judge has since been transferred due to evidence of corruption. Interview with FESPAD, San Salvador, Jan. 12, 2017.

¹⁷⁷ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

FINDINGS

HUMAN RIGHTS DEFENDERS

LGBT activists face violence and discrimination from State actors that is often unpunished. These violations impede the work of human rights defenders and have a directly negative effect on the promotion of human rights.

Legal Summary

El Salvador has a special duty to protect human rights defenders, which includes those defending the rights of LGBT persons.¹⁷⁸ The United Nations Declaration on Defenders states “[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”¹⁷⁹ In the Inter-American system, both the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission on Human Rights (IACHR) have recognized the right to defend human rights, and the IACHR has established a rapporteurship on human rights defenders.¹⁸⁰

Any person who “promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally” is considered a human rights defender.¹⁸¹ This definition

¹⁷⁸ UN, General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted on December 9, 1998, A/Res/52/144, March 8, 1999.

¹⁷⁹ While the Declaration on Defenders is a non-binding instrument, it contains rights that are encapsulated in other binding international instruments, such as the International Covenant on Civil and Political Rights. The Declaration on Defenders was also adopted by consensus by the General Assembly, representing a strong commitment to its implementation. UN, General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted on December 9, 1998, A/Res/52/144, March 8, 1999, Article 1; United Nations Human Rights Office of the High Commissioner, *Declaration on Human Rights Defenders*, available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>, accessed on March 24, 2017.

¹⁸⁰ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.LV/II Doc. 66, December 31, 2011, para. 16; Organization of American States, *Rapporteurship on Human Rights Defenders*, available at: <http://www.oas.org/en/iachr/defenders/default.asp>, accessed on March 24, 2017.

¹⁸¹ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.LV/II Doc. 66, December 31, 2011, para. 12, (quoting, Inter-American Commission on

encompasses any person or group, paid or volunteering, of any gender, profession, or background, in the public or private sector.¹⁸² Defenders protect both unquestioned and nascent¹⁸³ civil, political, economic, social, and cultural rights.¹⁸⁴

Violence against activists can have the effect of discouraging the defense and promotion of human rights.¹⁸⁵ Under *Kawas-Fernández v. Honduras*, states are obligated “to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”¹⁸⁶ Specifically, the IACtHR has held that fear caused by the murder of a defender as a result of their advocacy work can stifle the ability of others to defend human rights.¹⁸⁷

Reports from the IACHR recognize that LGBT human rights defenders face specific threats, in addition to those faced by all defenders.¹⁸⁸ LGBT defenders commonly face aggression,

Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 124 Doc. 5 rev. 1, March 7, 2006, para. 13).

¹⁸² United Nations Human Rights Office of the High Commissioner, *Who is a defender*, available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>, accessed on March 24, 2017.

¹⁸³ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, para. 16, (quoting, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 124 Doc. 5 rev. 1, March 7, 2006, para. 36).

¹⁸⁴ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, para. 16 (citing, I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 147; I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 77).

¹⁸⁵ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, paras. 25-27.

¹⁸⁶ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, para. 18 (quoting, I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits. Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 45).

¹⁸⁷ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, para. 25 (quoting, I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96).

¹⁸⁸ Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 5, 48, 81. The Committee against Torture, the former UN Commission on Human Rights, and the UN Human Rights Council, through the Special Rapporteur on the situation of human rights defenders, have all expressed concern regarding the violence and discrimination faced by human rights defenders working to protect the rights of LGBT persons. Committee against Torture,

harassment, threats, and smear campaigns by State and non-State actors.¹⁸⁹ Investigators often fail to correctly identify victims, misclassify crimes against LGBT persons, or ignore the intersectional vulnerabilities of human rights defenders and LGBT persons.¹⁹⁰ States undermine the work of LGBT defenders by criminalizing or refusing to recognize their work.¹⁹¹ As such, El Salvador must provide protections that address the unique and specific threats to those defending the human rights of LGBT persons.

Violations of the Rights of Human Rights Defenders

Government actors have targeted human rights defenders and non-governmental organizations (NGOs) that advance the rights of LGBT people, effectively restricting their ability to work. As Wendy Castillo, a lesbian activist at ASPIDH, stated, “Everyone here is vulnerable to violence, not only the LGBT community. But [activists] are more vulnerable because we denounce acts of violence on television, on the radio, through protests, and before the [Legislative] Assembly.”¹⁹²

Conclusions and recommendations of the Committee against Torture: Venezuela, U.N. Doc. CAT/C/CR/29/2, 23 December 2002, para. 10: “The Committee expresses its concern at the following: [...] (d) Complaints of threats and attacks against sexual minorities and transgender activists...”; CHR, Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61, U.N. Doc. E/CN.4/2002/106, 27 February 2002, para. 51: “Others, such as...sexual minorities, students, teachers and intellectuals – all working for the promotion and protection of human rights - have been subjected to human rights abuses.” “The Special Rapporteur has been struck...by how frequently his attention has been drawn to the most exposed groups, such as ... defenders of the rights of lesbian, homosexual, bisexual, transsexual and intersex persons.” UN, General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders*, A/69/259, 5 August 2014, para. 48. On June 28, 2016 the UN Human Rights Council adopted a resolution to create an “Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.” Human Rights Council, *Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/32/L.2/Rev.1, 28 June 2016, para. 3.

¹⁸⁹ Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, paras. 158-168; Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, pp. 143-33, 156-57.

¹⁹⁰ Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, paras. 158-168; Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, pp. 143-33, 156-57.

¹⁹¹ Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, paras. 158-168; Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II Doc. 66, December 31, 2011, pp. 143-33, 156-57.

¹⁹² Interview with Wendy Castillo, San Salvador, Jan. 9, 2017. (*Todas estamos propensas, no solo la comunidad LGBT. Pero sí te pone en vulneración porque hemos denunciado actos de violencia por tv, por radio, en protestas, en frente de la Asamblea.*)

State actors have inhibited the work of LGBT rights defenders through: raids of NGO offices, heightened policing of NGO members, disrespect for LGBT rights defenders and their work, and violence or threats against known LGBT rights defenders.

Law enforcement has invaded, or attempted to invade, the offices of organizations that defend the rights of LGBT persons on three reported occasions. On August 12, 2013, police entered COMCAVIS, a transgender human rights organization, with an allegedly invalid warrant. Officers referenced the organization as a place where illegal activities and prostitution occurred, treated members aggressively, and did not allow members to record police conduct.¹⁹³ On February 20, 2015, police attempted to enter ASPIDH, a transgender human rights organization, without a warrant and insulted members of the organization, calling them prostitutes and criminals.¹⁹⁴ On June 29, 2015, following a press conference denouncing the officers who attacked Alex Peña, ESMULES, a lesbian human rights organization, was subject to a suspected police break in.¹⁹⁵

Law enforcement has subjected NGOs to heightened policing. For approximately four months in the beginning of 2014, soldiers implementing an anti-gang neighborhood checkpoint stopped and patted down all transgender persons who sought to enter ASPIDH,¹⁹⁶ but did not stop and search all other persons in the area.¹⁹⁷ The harassment obstructed ASPIDH from conducting its work, resulting in the organization having to move its headquarters.¹⁹⁸

Police officers have exhibited disrespectful behavior towards LGBT rights defenders and their work through the use of insulting and dismissive language. Officers have referred to transgender rights NGOs as criminal or prostitution organizations.¹⁹⁹ Refusing to recognize the work of transgender rights organizations as legitimate can stifle their efforts. For instance, Bianca, a transgender woman, was denied a permit to hold a pro-LGBTI rally because, upon presenting her ID, she was told, “That’s not you. Let the person in this picture come.”²⁰⁰

¹⁹³ Interview with Karla Avelar, San Salvador, Jan. 10, 2017; Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, para. 347.

¹⁹⁴ Interview with Natalia, pseudonym, San Salvador, Jan. 9, 2017; Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, para. 347.

¹⁹⁵ Michael K. Lavers, *Trans Salvadoran advocate claims police attacked him*, Washington Blade, July 30, 2015, available at: <http://www.washingtonblade.com/2015/07/30/trans-salvadoran-advocate-claims-police-attacked-him/>, accessed on March 24, 2017.

¹⁹⁶ Interviews with Mónica Hernández, San Salvador, Jan. 11, 2017; Wendy Castillo and Nathaly Camila Portillo, San Salvador, Jan. 9, 2017.

¹⁹⁷ Interview with Mónica Hernández, San Salvador, Jan. 11, 2017.

¹⁹⁸ Interview with Mónica Hernández, San Salvador, Jan. 11, 2017.

¹⁹⁹ Interviews with Karla Avelar, San Salvador, Jan. 10, 2017; Natalia, pseudonym, San Salvador, Jan. 9, 2017.

²⁰⁰ Interview with Bianca, pseudonym, San Salvador, Jan. 10, 2017. Incident occurred in San Miguel. (*Esa no eres tú. Que venga la persona que está aquí.*)

State actors have used violence and threats against LGBT rights defenders, particularly against those who are actively engaged in deterring attacks on LGBT people. The beating and detention of Alex Peña, discussed in detail above, is a striking instance of violence against an activist.²⁰¹ Not only that, but when other human rights defenders attempted to intervene to help Alex, they faced threats and harassment themselves. After explaining that they worked in human rights, police responded, “we don’t give a fuck about what you do.”²⁰² Alex reported that the police “... were all over the street laughing out loud, telling me that ‘this was happening to us because of my faggot friends.’”²⁰³ Wendy Castillo, who assisted Alex, was subsequently followed by police officers.²⁰⁴ Other activists reported being insulted, threatened, or dismissed when acting as human rights defenders.²⁰⁵ A member of COMCAVIS had to seek asylum in the United States due to threats from police officers after the raid of their offices.²⁰⁶

Far from protecting LGBT rights defenders, these violent and threatening actions inhibit the ability of activists to protect human rights. Further, that these actions go unpunished means those who wish to fight for the rights of LGBT people may not do so out of fear of reprisal from State actors.

VIOLENCE BY STATE ACTORS: POLICE & ARMED FORCES

The police beating of Alex Peña made international headlines.²⁰⁷ As described earlier in this report, fifteen police officers surrounded Alex outside a police station, beat him and taunted him for his identity as a transgender man, arrested him, and continued to abuse him in detention.²⁰⁸

²⁰¹ Interview with Alex Peña, San Salvador, Jan. 13, 2017.

²⁰² Interview with Villy Rivera, San Salvador, Jan. 12, 2017. (*Porque al principio les dijimos: “Trabajamos en Derechos Humanos,” y nos dijeron que les valía verga lo que hiciéramos.*)

²⁰³ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*Ellos por toda la calle riéndose, diciéndome que por mis amigos culeros estábamos así.*)

²⁰⁴ Interview with Wendy Castillo, San Salvador, Jan. 9, 2017.

²⁰⁵ Juana, pseudonym, a transgender woman, reported that a police officer responded to her identifying as a human rights defender by saying that they didn’t care and that “people like you are the first ones to die and I myself can be the one who kills you.” (*Las personas como vos son los primeros que se mueren y yo mismo puedo ser el que te mate*); Interview with Juana, pseudonym, San Salvador, Jan. 10, 2017 (Incident occurred in 2016, in La Libertad department and was reported to the PDDH); *see also*, interview with Catalina, pseudonym, San Salvador, Jan. 9, 2017.

²⁰⁶ Interview with Karla Avelar, San Salvador, Jan. 10, 2017.

²⁰⁷ *See, e.g.*, Nina Lakhani, *LGBT in El Salvador: Beatings, intolerance, death*, Al Jazeera, August 12, 2015, available at: <http://www.aljazeera.com/indepth/features/2015/08/lgbt-el-salvador-beatings-intolerance-death-150805075132892.html>, accessed on March 24, 2017.

²⁰⁸ Interview with Alex Peña, San Salvador, Jan. 13, 2017.

Alex Peña's story is far from isolated. In fact, it embodies many of the patterns of law enforcement²⁰⁹ violence revealed to be a part of the regular existence of LGBT people in El Salvador. According to interviews conducted for this report, law enforcement officers, both police and members of the military exercising police powers, target LGBT people for violence, inflict hateful violence in public, and many times move the violence to a private location, often a police station, where the abuse can escalate.

Almost every LGBT individual interviewed recalled numerous instances in which they were victimized by law enforcement officers, but such violence has become so normalized that most of the interviewees only had time to report their worst experiences. Their stories revealed that members of the military engaged in law enforcement, a practice the Salvadoran government has been escalating since 2009,²¹⁰ are committing violent acts against LGBT people. The interviews further revealed patterns in how law enforcement violence begins, and in the types of violence that law enforcement subject LGBT people to. Interviews also revealed that, while there is some disagreement within the LGBT community as to the effectiveness of police training to date, sensitization of law enforcement seems to have had some, if limited, impact.

Legal Summary

As described above, under international law, El Salvador has a duty to ensure that police and soldiers employed in law enforcement adhere to international human rights standards, including the duties to respect and ensure non-discrimination, personal integrity, freedom from inhumane or degrading treatment, and the prohibition on arbitrary detention.²¹¹ El Salvador's duty to prevent human rights abuses by police and military includes training these actors on human rights.²¹²

While the Constitution of El Salvador defines the military's mission as defending the state from external threats,²¹³ article 168 gives the President the authority to use the armed forces for internal security under "exceptional" circumstances where the civilian system has been "exhausted."²¹⁴ The military is only to be used in this way for a limited time and only so far as is

²⁰⁹ The term "law enforcement" is used to refer to all state actors who exercise police powers, including members of the military and the police. The term "police" refers to members of the PNC or CAM.

²¹⁰ Jeannette Aguilar, *El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente*, p. 76, available at: <http://www.uca.edu.sv/iudop/wp-content/uploads/Jeannette-Aguilar-2016-64-86.pdf>, accessed on March 24, 2017.

²¹¹ See I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 169.

²¹² See I/A Court H.R., *Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 4, para. 215.

²¹³ Constituent Assembly, Constitution of the Republic of El Salvador and its reforms, December 15, 1983, article 212.

²¹⁴ Constituent Assembly, Constitution of the Republic of El Salvador and its reforms, December 15, 1983,

necessary to “re-establish order.”²¹⁵ In 2009, then President Mauricio Funes issued Executive Decree No. 60, invoking article 168 of the Constitution, to deploy members of the military to support the National Civil Police (PNC) in internal security.²¹⁶ The decree has been renewed nine times by Funes and his successor, current President Salvador Sánchez Cerén, all the while expanding the military’s police functions through a succession of amendments.²¹⁷

The Constitution of El Salvador enshrines the rights to life, physical integrity, and liberty, among others, and establishes the obligation of the police to fulfill its duties in full respect of human rights.²¹⁸ Under the police’s organic law, one of the functions of the police is to protect and guarantee the free exercise of the rights and liberties of all the persons in the national territory,²¹⁹ and to protect the human dignity, as well as maintain and defend the human rights, of all persons.²²⁰ While the military’s organic statute does not mention human rights,²²¹ the Ministry of National Defense has a specific office targeting military members that provides training on, and investigates allegations of, human rights abuses.

Civilian criminal statutes prohibiting crimes such as rape apply equally to members of the police and military. So do the heightened penalties for hate crimes in articles 129 and 155 of the Salvadoran Criminal Code, which lengthen the sentences given for killing or threatening someone because of their sexual orientation, race, ethnicity, religion, political affiliation or gender.²²² Because the Ministry of National Defense and the PNC are executive agencies, Presidential Decree No. 56, which prohibits discrimination on the basis of sexual orientation or gender identity by executive agencies, applies to members of the military and the PNC.²²³

article 168.

²¹⁵ Constituent Assembly, Constitution of the Republic of El Salvador and its reforms, December 15, 1983, article 168.

²¹⁶ Executive Decree No. 60, Sep. 2009.

²¹⁷ Executive Decree No. 60, Sep 2009, as amended by Executive Decree No. 68, Dec 2016, article 1.

²¹⁸ Constituent Assembly, Constitution of the Republic of El Salvador and its reforms, December 15, 1983, articles 2 and 159.

²¹⁹ Legislative Assembly of El Salvador; Organic Law of the National Civil Police; December 6, 2001; article 4, section 2.

²²⁰ Legislative Assembly of El Salvador; Organic Law of the National Civil Police; December 6, 2001; article 13, section 2.

²²¹ Legislative Assembly of El Salvador; Organic Law of the Armed Forces; June 13, 1994.

²²² Legislative Assembly of El Salvador; decree No. 106 – Amendments to the Criminal Code; September 3, 2015. See also Publication of the approved and sanctioned decree in El Salvador’s Official Post; September 24, 2015; page 13 and 14, available at: <http://www.diariooficial.gob.sv/diarios/do-2015/09-septiembre/24-09-2015.pdf>, accessed on March 24, 2017.

²²³ Presidential Decree No. 56, 2010; Dispositions to avoid all forms of discrimination in the public administration base on gender identity and/or sexual orientation; May 4th 2010.

Military Violence While Engaged in Law Enforcement

“I don’t remember if there were human rights in El Salvador [in 1987] ... It’s the same [today]; the authorities look for ways of attacking you, be it verbally or physically.”

– Meybel, transgender woman victim of military violence, during the civil war and today.²²⁴

The research for this report revealed that more extensive use of the military for policing has increased interactions between soldiers and civilians and resulted in incidents where military officers on the streets commit violence against LGBT people.

Previously published reports on violence toward LGBT people in El Salvador have not yet highlighted violence by military officers as a distinct finding.²²⁵ However, a wide range of those interviewed for this report recalled violence at the hands of military officers and also overwhelmingly reported that members of the military are more disrespectful and more violent toward them than the police.²²⁶ All incidents described below occurred within the last several years, from approximately 2010 to present, corresponding with the rise in the use of military officers for internal law enforcement. In addition, despite being aware of the problem, military officials have not taken adequate steps to address it.

Military Officers Commit Acts of Violence Against LGBT People

Many LGBT people reported that military officers engaged in law enforcement have committed violence against them within the last several years. Much of the violence reported was

²²⁴ Interview with Meybel, pseudonym, San Salvador, Jan. 10, 2017. ([Referring to the year 1987] *No sé si ya habían derechos humanos aquí en El Salvador. [Answering whether things have changed] Es igual. Autoridades buscan maneras de agredirlo, ya sea verbalmente o físicamente.*)

²²⁵ See, e.g., Human Rights First, *Bias-Motivated Violence Against LGBT People in El Salvador*, Jan. 2017, available at: http://www.humanrightsfirst.org/sites/default/files/El-Salvador-Brief-ENG_0.pdf, accessed on March 24, 2017; American University, Comcavis, et. al., *List of Issue submitted to UN Office of the High Commissioner for Human Rights*, February 2015, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLV/INT_CCPR_ICS_SLV_19856_E.pdf, accessed on March 24, 2017; University of California, Berkeley, *Sexual Diversity in El Salvador: A Report on the Human Rights Situation of the LGBT Community*, July 2012, available at: https://www.law.berkeley.edu/files/IHRLC/LGBT_Report_English_Final_120705.pdf, accessed on March 24, 2017; Harvard University, *The Violation of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in El Salvador*, 2010, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngo/LGBT_Shadow_Report_El_Salvador_HRC100.pdf, accessed on March 24, 2017.

²²⁶ See, e.g., Interviews with Mónica Hernández, San Salvador, Jan. 11, 2017; Deisy, pseudonym, San Salvador, Jan. 10, 2017; Rodrigo, pseudonym, San Salvador, Jan. 12, 2017; Kelvin, pseudonym, San Salvador, Jan. 12, 2017; Emilia, pseudonym, San Salvador, Jan. 9, 2017; Sara, pseudonym, San Salvador, Jan. 11, 2017.

perpetrated by joint PNC/military patrols.²²⁷ This violence has been targeted at LGBT people because of their sexual orientation and/or gender identity. This is clear from statements made by soldiers during the incidents, the types of violence inflicted, the victims' noticeable gender and/or sexual non-conformity, and an otherwise lack of any legitimate law enforcement purpose for the incident.

Some interviewees live or work in areas with a high military presence, which increases their daily interactions with soldiers and thus increases their vulnerability to violence.²²⁸ One interviewee, Kelvin, a transgender man, lives near one of the largest prisons in El Salvador, an area which also has a high rate of gang activity. Both of these factors have led to a substantial military presence in his neighborhood. Kelvin reported that, since around 2014, he has frequently been stopped by patrols because he has tattoos and piercings, which they allegedly consider indicators of gang affiliation. He also reported that abuse begins not when he is stopped but when soldiers discover that he is transgender.²²⁹

Interviews also revealed that LGBT people are being targeted for violence because of their sexual orientation and/or gender identity, which is often made clear by what the soldiers say during the incident. For instance, Daniela, a transgender woman, reported that a group of soldiers once stopped her in La Paz Department on her way home from a party. The soldiers made fun of her until one said "leave the faggot,"²³⁰ and then "what we can do is beat the shit out of him and put the rifle in his ass,"²³¹ and finally proceeded to hit her very hard, threw her to the ground, and kicked her.²³² Several other transgender and *travesti* people reported being hit with the back of a rifle,²³³ hit in the back of the neck,²³⁴ kicked,²³⁵ and severely beaten²³⁶ by military officers or joint PNC/military patrols when their gender identity became apparent.

The violence is often sexually motivated. During one incident, Emilia, a transgender woman, was asked by soldiers at a bus stop for her cell phone. When she refused, they threatened her, said

²²⁷ Because of this, further incidents of military violence are detailed in the section that follow on general law enforcement.

²²⁸ (*See also*) the story of soldiers stationed outside the offices of ASPIDH for the first four months of 2014 in the Human Rights Defenders section.

²²⁹ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

²³⁰ Interview with Daniela, pseudonym, San Salvador, Jan. 10, 2017. (*Deja al culero.*)

²³¹ Interview with Daniela, pseudonym, San Salvador, Jan. 10, 2017. (No date for the incident was provided.) (*Lo que podemos hacer es taguearlo y meterle el rifle en el culo.*)

²³² Interview with Daniela, pseudonym, San Salvador, Jan. 10, 2017. (No date for the incident was provided. She did not file a complaint.)

²³³ Interviews with Mina, pseudonym, San Salvador, Jan. 12, 2017; Alex Peña, San Salvador, Jan. 13, 2017.

²³⁴ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017.

²³⁵ Interviews with Daniela, pseudonym, San Salvador, Jan. 10, 2017; Rosibel, pseudonym, San Salvador, Jan. 12, 2017.

²³⁶ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

they would take her to a police station, but then took her to a different location where they raped her.²³⁷ In another instance, Deisy, a transgender woman sex worker, reported that she had been solicited four times between 2010 and 2013 by soldiers who, after having sex with her, refused to pay. During one of those incidents, the soldier had sex with her while threatening her with a gun. Three of these incidents occurred in San Salvador, the other in Santa Ana.²³⁸ Many LGBT people also reported soldiers harassing them, for instance by conducting arbitrary and invasive searches,²³⁹ withholding their IDs,²⁴⁰ trying to hit and punch them,²⁴¹ following them,²⁴² and insulting them on the street.²⁴³

Failure to Address Military Abuses

Despite evidence that military officers are committing human rights violations against LGBT people, interviews with the Ombudsperson's Office (PDDH) and the military reveal that the military is not taking adequate steps to address the issue.

When asked to comment for this report on the allegations of military violence against LGBT people, Lieutenant Colonel Luis Pérez y Pérez, the chief of the human rights department in the legal affairs office at the Ministry of National Defense, denied that there was an issue.²⁴⁴ He said that military officers carrying out police duties with the PNC are respectful of international human rights law and that, if violations occur, they are isolated.²⁴⁵ Lieutenant Colonel Pérez y Pérez was only able to provide one example of an investigation into a military agent for violating the rights of an LGBT person, which he said concluded that the allegations were false.²⁴⁶

Yet the research for this report revealed that the military has, on several occasions, acknowledged that its officers are being accused of human rights abuses. Senior PDDH Official and LGBTI Roundtable Coordinator Jessica Torres reported that the statistics of the Ombudsperson's Office mark out Armed Forces agents as violators of the right to personal integrity.²⁴⁷ When the PDDH has presented this information to military officials, Torres said that the military's response is to "always complain"²⁴⁸ that they are being pointed to when it comes to violations of the right to integrity.²⁴⁹ Torres also reported that they conduct sensitization training for soldiers, but recalled

²³⁷ Interview with Emilia, pseudonym, San Salvador, Jan. 9, 2017.

²³⁸ Interview with Deisy, pseudonym, San Salvador, Jan. 10, 2017.

²³⁹ Interviews with Mina, pseudonym, San Salvador, Jan. 12, 2017; Mónica Hernández, San Salvador, Jan. 11, 2017; Wendy Castillo, San Salvador, Jan. 9, 2017; Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

²⁴⁰ Interview with Valentina, pseudonym, San Salvador, Jan. 11, 2017.

²⁴¹ Interview with Sara, pseudonym, San Salvador, Jan. 11, 2017.

²⁴² Interview with Lucía, pseudonym, San Salvador, Jan. 12, 2017.

²⁴³ Interview with Patricia, pseudonym, San Salvador, Jan. 9, 2017.

²⁴⁴ Interview with Luis Pérez y Pérez, Phone Interview, Washington, DC, Feb. 2, 2017.

²⁴⁵ Interview with Luis Pérez y Pérez, Phone Interview, Washington, DC, Feb. 2, 2017.

²⁴⁶ Interview with Luis Pérez y Pérez, Phone Interview, Washington, DC, Feb. 2, 2017.

²⁴⁷ Interview with Jessica Torres, San Salvador, Jan. 13, 2017.

²⁴⁸ Interview with Jessica Torres, San Salvador, Jan. 13, 2017. (*Siempre se quejan.*)

²⁴⁹ Interview with Jessica Torres, San Salvador, Jan. 13, 2017.

one soldier asking, in reference to transgender women, “but, look, why do they want to be treated like women if they are men?”²⁵⁰ Torres opined that the military should not be involved in matters of public security given that they are trained to use force against external threats.²⁵¹

Lieutenant Colonel Pérez y Pérez stated that soldiers who carry out police duties receive general human rights training.²⁵² They also receive guidelines on when and how they can interact with LGBT civilians, but these guidelines are provided through a presentation and not in writing.²⁵³

Law Enforcement Officers Target LGBT People

Salvadoran police officers and soldiers target LGBT persons for violence because their appearance, expression, or behavior falls outside traditional gender and sexual norms—in other words, because they are lesbian, gay, bisexual, and/or transgender. Transgender women who are sex workers face added vulnerability to harassment and violence by members of the police and military. As is made clear by the details of the following incidents, no factor explains the violent actions of these State actors against this population better than their strong aversion to LGBT people.

Violent Interactions Based on Sexual Orientation and/or Gender Identity

The interviews for this report show that police officers and soldiers initiate immediately violent interactions against persons whose appearance, expression, or behavior makes it clear that they are lesbian, gay, bisexual, and/or transgender. These incidents often begin on the streets or in other public areas of El Salvador, like parks and food stalls. Many of the reported incidents involve multiple members of the police and/or military. The researchers found that these State actors sometimes move the interaction to a private and isolated location where they can further escalate the violence into beatings and even rape. The research for this report shows that Salvadoran law enforcement officers sometimes use police stations to commit violence against LGBT persons.

The violence and harassment that law enforcement officers commit ranges from verbal, to physical, to sexual. The verbal harassment is expressly homophobic and transphobic: when driving by seven transgender women on the street in Sonsonate Department, police officers on patrol said “faggots, get out of the way or we’ll run you over”;²⁵⁴ in another incident outside a pro-LGBT clinic in San Salvador in early 2016, soldiers laughed at the sight of two transgender women exiting a health clinic and said, “these fags want to get themselves killed.” One of the

²⁵⁰ Interview with Jessica Torres, San Salvador, Jan. 13, 2017. (*Pero, mire, ¿por qué quieren que las traten como mujeres si son hombres?*)

²⁵¹ Interview with Jessica Torres, San Salvador, Jan. 13, 2017.

²⁵² Interview with Luis Pérez y Pérez, Phone Interview, Washington, DC, Feb. 2, 2017.

²⁵³ Interview with Luis Pérez y Pérez, Phone Interview, Washington, DC, Feb. 2, 2017.

²⁵⁴ Interview with Juana, pseudonym, San Salvador, Jan. 10, 2017. (*Maricones, quitense de aquí o los vamos a atropellar.*) (She did not file a complaint.)

women immediately went to a nearby government office and filed a report.²⁵⁵ This sort of animus was also exhibited in an incident where law enforcement officers drove by a group of transgender women waiting for the bus and pepper-sprayed them.²⁵⁶

Transgender women who are sex workers are particularly vulnerable to police abuse.²⁵⁷ They face routine harassment at night in San Salvador by members of both the PNC and the CAM, who abuse their authority by citing a municipal ordinance²⁵⁸ to extort them for free sexual services or a \$17 fine in return for not arresting them,²⁵⁹ even though the ordinance does not actually establish arrest as a possible penalty.²⁶⁰ Police officers sometimes make good on their threats of arrest by detaining transgender women sex workers at police stations for hours on end without charges if they do not immediately pay the fine.²⁶¹ Because the officers engaged in these practices tend to cover their badges, wear ski masks, and leave their police cars behind, it is virtually impossible to identify them in a complaint.²⁶²

Larger groups of law enforcement officers will sometimes target groups of people on the street who appear to be lesbian, gay, bisexual, and/or transgender. In one incident, which occurred in a San Salvador suburb in late 2016, seven police officers with covered badges approached a group of friends who identify as *travesti* having a meal on the street and, after throwing their food on the ground, slapped them hard in the chest (a practice known as *pechada*), checked their cellphones to make sure they had no gang affiliations, groped, and photographed them in full view of passersby.²⁶³

Groups of Salvadoran police officers and soldiers will sometimes choose to move an already violent interaction into a police station where the abuse can escalate further. In a separate incident in a San Salvador suburb in late 2016, a joint police/military squad, of about four police officers and a soldier, detained four *travesti* friends who were simply eating and watching soccer

²⁵⁵ Interview with Bianca, pseudonym, San Salvador, Jan. 10, 2017. (*Estos culeros quieren que los maten.*)

²⁵⁶ Interview with Patricia, pseudonym, San Salvador, Jan. 9, 2017. (Location and date unspecified. She did not file a report.)

²⁵⁷ Redlactrans, *The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America*, 2012, p. 14.

²⁵⁸ Sex work is not criminalized in El Salvador; however, a San Salvador municipal ordinance lists any public offer of sexual services and public sexual harassment as a “grave infraction.” San Salvador Municipal Mayorality, Ordinance for Citizen Coexistence in the San Salvador Municipality, Decree 87, December 20, 2011, Article 32.

²⁵⁹ Interview with Sara, pseudonym, San Salvador, Jan. 11, 2017. Sara, a transgender woman sex worker, said police officers would harass her for money or sex up to four times per week. (Location and date unspecified.)

²⁶⁰ The ordinance does list fines as a possible penalty. San Salvador Municipal Mayorality, Ordinance for Citizen Coexistence in the San Salvador Municipality, Decree 87, December 20, 2011, Articles 82, 86, and 96.

²⁶¹ Interview with Sara, pseudonym, San Salvador, Jan. 11, 2017. She reported being held for three hours with no charges or explanation and then being released. (Location and date unspecified. She did not file a report.)

²⁶² Interview with Sara, pseudonym, San Salvador, Jan. 11, 2017.

²⁶³ Interview with Lucía, pseudonym, San Salvador, Jan. 12, 2017. (She did not file a report.)

on the street. The joint squad took them to a police station, made them raise their arms and open their legs, slapped them hard in the chest (*pechada*), and asked one of them to pull up her shirt, allegedly to check for gang tattoos; when she refused, they kicked her. The friends were detained without charges for two hours.²⁶⁴ In another case, a gay man and some of his friends were hanging out at a local public park when they were detained by police officers, beaten, taken to a police station, and beaten further; when the officers returned them to the park, they threatened to shoot them if they did not leave.²⁶⁵

The researchers found that Salvadoran police officers and soldiers repeatedly commit these sorts of violations, at times against the same individual or group. Mina, a *travesti* individual, reported that on two separate occasions within a five-week period in late 2016, she was beaten on the street, detained, taken to a police station, raped, and beaten further by members of the same joint police-military squad.²⁶⁶ She and three of her friends (two of them *travesti*, one of them gay) were drinking sodas and eating churros at their usual street stall hangout in a San Salvador suburb when a group of three police officers and one soldier approached, made them stand up, and proceeded to slap them hard in the chest (*pechada*). Then, they made them try to eat each other's fake fingernails, took them to a police station,²⁶⁷ separated them, and then stripped Mina and tied her to a post, at which point one squad member tried to rape her orally and another anally; when she resisted, they hit her ribs so hard that one of them was nearly fractured. Less than five weeks later, the same group subjected Mina to the same ordeal. She went to a court three times to try to file a report about the first incident but was turned away. She managed to file a report about the second incident.²⁶⁸

As described above, in June 2015, a group of Salvadoran police officers beat Alex Peña and repeatedly smashed his face into the floor of the police station, where he was detained after several police officers broke his eye-socket and jaw by kicking him in the head.²⁶⁹ The practice of using police stations to abuse lesbian, gay, bisexual, and transgender Salvadorans discourages them from turning to law enforcement for help, reinforces the distrust LGBT people, and the general population, have of law enforcement officials, and underscores the extent of the impunity with which members of the police and military violate the rights of those they are supposed to protect.²⁷⁰

²⁶⁴ Interview with Rosibel, pseudonym, San Salvador, Jan. 12, 2017. (She did not file a report.)

²⁶⁵ Interview with Francisco and Rodrigo, pseudonyms, San Salvador, Jan. 12, 2017. (Location and date unspecified.)

²⁶⁶ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017.

²⁶⁷ Mina's story was corroborated until this point (and no further because they were separated) during an interview with *travesti* individual Rosibel, pseudonym, San Salvador, Jan. 12, 2017. (She did not file a report.)

²⁶⁸ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017.

²⁶⁹ See section on Alex Peña above.

²⁷⁰ See section on Access to Justice below.

Violence Committed After Sexual Orientation and/or Gender Identity Becomes Apparent

The researchers found that police officers and soldiers frequently escalate checks for identification or for possible gang tattoos into violent interactions because they realize that the person they have stopped is transgender. The IDs of transgender men and transgender women do not match their gender expression or name, given that Salvadorans cannot change their documents to match their gender identity. For transgender men, their gender identity is also noticed by police officers and soldiers when, to check for gang tattoos, they lift their shirts and see their chest bindings.

Kelvin, a transgender man who lives in a San Salvador suburb, reported that he is frequently stopped by patrols because he has tattoos and piercings, which the patrols consider indicators of gang affiliation; he is then often asked either for his ID or to lift his shirt to reveal his tattoos, and complying with either request shows he is transgender. Invariably, the treatment gets worse at that point.²⁷¹ On one occasion in late 2016, Kelvin was walking in his neighborhood when four soldiers and one police officer with face masks, which indicates that they were an anti-gang patrol, whistled at him to come over. After he complied, the soldiers raised his shirt to his neck, revealing his binding. They asked for his ID, which he did not have because a police officer had destroyed it weeks earlier while calling him a “faggot.”²⁷² When he did not produce his ID, they beat him. He told the researchers, “I just put myself in God’s hands, because when I saw that they covered their faces, that’s when I really got scared.”²⁷³ One of the State actors beating him said, “if you want to be a man, you have to take it like a man.”²⁷⁴ His interview took place weeks after this incident, and he still had trouble breathing. He did not file a report out of fear of reprisals.²⁷⁵ He said:

I have been persecuted by security forces, on so many occasions. Many times when people know about my gender identity then because of discrimination they persecute you even more. They don’t even let you live in peace... People say I should get involved in the [human rights for LGBT people] organization, but sometimes I prefer to simply lock myself up at home—who knows if something will happen to me on the way there.²⁷⁶

²⁷¹ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

²⁷² Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Vos culero sos.*)

²⁷³ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Lo único que hice fue encomendarme a las manos de Dios, porque cuando vi que se taparon las caras, ahí sí ya me dio más miedo.*)

²⁷⁴ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Vos bicho querés ser, como bicho vas a aguantar.*)

²⁷⁵ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

²⁷⁶ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Sinceramente he sido bien asediado, pues, por lo que es la seguridad pública. Ya muchas veces cuando saben mi identidad de género entonces por la discriminación más lo persiguen a uno. No lo dejan a uno ni vivir en paz... A veces me dicen “vení, acércate a la organización,” pero a veces prefiero encerrarme en la casa, quién sabe que en el camino me vaya a pasar algo.*)

Similarly, Miguel, a transgender man, reported that he is frequently stopped by police officers on the street and is made to lift his shirt, allegedly to check for gang tattoos; when they see his girdle, the treatment gets worse; they detain and beat him, using lesbian slurs and other obscene gendered language, but they don't take him into custody.²⁷⁷ The most recent time this happened,²⁷⁸ the police removed his shirt, exposing his girdle and accusing him of carrying drugs in it; they then beat him and split his lip open, telling him that if he is a man, he can put up with this kind of treatment. He does not file reports out of fear of reprisal and because he believes that the police will not investigate such incidents.²⁷⁹ When the researchers asked Miguel why he thought this happens, he said that when you look like a man, it is as if the police have the authority to beat you up.²⁸⁰

In addition to the incident discussed in his separate section of this report, Alex Peña described being assaulted by soldiers because of the mismatch between his ID and his gender expression. On one occasion, three soldiers stopped him in the street; when he provided them with his ID and municipal police badge, they became confused, asking him, "don't you like to be touched by men?"²⁸¹ One of them then put his hands around Alex's neck and choked him.²⁸²

The researchers received reports from transgender women that not carrying an ID reduces the probability that law enforcement officers will learn of their transgender identity and thus treat them worse.²⁸³ One transgender woman activist also reported that, unlike with her government-issued ID, she passes for cisgender to police when they check her work ID because it accurately reflects her gender identity and because it refers to the civil society organization (CSO) where she works as a human rights organization and not a transgender rights organization.²⁸⁴

²⁷⁷ Interview with Miguel, pseudonym, San Salvador, Jan. 9, 2017.

²⁷⁸ As of the date of his interview on Jan. 9, 2017.

²⁷⁹ Interview with Miguel, pseudonym, San Salvador, Jan. 9, 2017. (Location and date unspecified.)

²⁸⁰ Interview with Miguel, pseudonym, San Salvador, Jan. 9, 2017.

²⁸¹ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*¿Y a vos no te gusta que te toquen los hombres?*)

²⁸² Interview with Alex Peña, San Salvador, Jan. 13, 2017. (Location and date unspecified.)

²⁸³ Interviews with Graciela, pseudonym, San Salvador, Jan. 10, 2017; Natalia, pseudonym, San Salvador, Jan. 10, 2017. This practice is in line with the results of a study conducted by the Salvadoran National Civil Police (PNC) that concluded that 60% of LGBT persons consider that hiding their sexual orientation and/or gender identity is the number one measure they take to minimize the chances of being the victims of violence and crime motivated by their sexual orientation and/or gender identity. Notably, while the number two measure was avoiding dangerous places, the number three measure was avoiding conflicts with the PNC itself. See *Informe para la Formulación del Diagnóstico sobre la Atención y Procedimientos dirigidos a la Población LGBTI*, slide 16 of 54 (PowerPoint Presentation), Policía Nacional Civil, 2017.

²⁸⁴ Interview with Natalia, pseudonym, San Salvador, Jan. 10, 2017.

Sexual and Gendered Violence

“Police officers treat us like men to beat us, but when it comes to demanding sexual favors from us, they treat us like women.”

– Ambar Alfaro, transgender woman activist, ASPIDH²⁸⁵

The interviews conducted for this report revealed patterns in the types of violence police and military inflict upon LGBT people. These types of violence appear to be tailored to question, correct, or degrade them for their sexual orientation and/or gender identity. Such violence includes sexual violence and gendered violence.

The most common type of violence reported was sexual violence.²⁸⁶ A recurring theme in these stories was the hypersexualizing of transgender women and *travestis*. Ambar Alfaro, the transgender woman activist quoted above, recalled trying to report a robbery to a police officer in La Paz Department in December 2011. The police officer locked himself in a room with her, demanded oral sex, and, upon her refusal, proceeded to masturbate and ejaculate on her feet.²⁸⁷ One transgender woman, Valentina, reported that she and her friend were beaten and raped by police officers on their way home from a nightclub.²⁸⁸ As told in the section above, Mina, a *travesti* individual, reported that, in a San Salvador suburb in late 2016, one officer tried to rape him orally while another tried to rape him anally during an arbitrary detention. A month later, the same group of police officers and soldiers detained him a second time, told him that they “wanted to go again,”²⁸⁹ and did the same thing. During these incidents, they told him that they were “more attracted to [him] because of [his] body,”²⁹⁰ that they “wanted to see if in fact [he] did what they had been told [he] did,”²⁹¹ that they wanted to “be” with him,²⁹² and that they “wanted to try [his] lips.”²⁹³

Several transgender women and *travestis* reported that police and soldiers groped them during arbitrary pat downs.²⁹⁴ Emilia, a transgender woman, recalled being subject to random pat downs

²⁸⁵ Interview with Ambar Alfaro, San Salvador, Jan. 9, 2017. (*Los policías nos tratan como hombres para golpear nos, pero a la hora de exigirnos favores sexuales, nos tratan como mujeres.*)

²⁸⁶ For more examples, see Emilia and Deisy’s stories in the section on military violence.

²⁸⁷ Interview with Ambar Alfaro, San Salvador, Jan. 9, 2017.

²⁸⁸ Interview with Valentina, pseudonym, San Salvador, Jan. 11, 2017. (Location and date unspecified.)

²⁸⁹ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Que querían otra vez.*)

²⁹⁰ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Me dijeron que yo les atraía más por mi cuerpo.*)

²⁹¹ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Que querían ver si en verdad así como le habían contado nosotros hacíamos eso.*)

²⁹² Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Que quería que estuviera con él.*)

²⁹³ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Que quería probar mis labios.*)

²⁹⁴ Interviews with Lucía, pseudonym, San Salvador, Jan. 12, 2017; Mónica Hernández, San Salvador, Jan. 11,

on the streets of San Salvador. On one occasion, a police officer grabbed her breasts, told her she could not do anything and that he had all the power. She did not report the incident.²⁹⁵ Natalia, a transgender woman who can pass as cisgender, noted that police try to touch her, whisper in her ear, try to undress her, and try to prove she doesn't have a vagina when they realize she is transgender.²⁹⁶

Many transgender women reported police officers coercing or attempting to coerce them into having sex.²⁹⁷ Graciela reported that, in June 2015 while she was in detention, two CAM officers and the director of the station coerced her into having sex in exchange for letting her go.²⁹⁸ Bianca recalled an incident where soldiers stopped her in the street, harassed her verbally, and then told her she had to give them oral sex to be let go. Thankfully, her nephew was nearby to help her out of the situation.²⁹⁹

Interviews conducted for this report also revealed stories of lesbian women and transgender men being targeted for sexual violence by law enforcement. Andrea Ayala, the director of ESMULES, reported the story of a teenage lesbian couple who were kicked out of their homes because of their sexual orientations. They went to the police for help; but instead, a member of the police called someone from his church, who raped the women in an attempt to correct³⁰⁰ their sexual orientations.³⁰¹ Diego, a transgender man, reported that transgender men are afraid to go to the police about corrective or punishing rape from their families because the police “will do the same things.”³⁰²

Even when the violence against LGBT people isn't sexual, it is often gendered. One type of violence reported by several transgender women and *travestis* was the *pechada*, an open-handed strike to the chest that some described as a signal to act like a man.³⁰³ The *pechada* is also used

2017.

²⁹⁵ Interview with Emilia, pseudonym, San Salvador, Jan 9, 2017.

²⁹⁶ Interview with Natalia, pseudonym, San Salvador, Jan. 9, 2017.

²⁹⁷ Additional stories about the targeting of transgender women who are sex workers can be found in the section above.

²⁹⁸ Interview with Graciela, pseudonym, San Salvador, Jan. 10, 2017.

²⁹⁹ Interview with Bianca, pseudonym, San Salvador, Jan. 10, 2017. (Location and date unspecified.)

³⁰⁰ The IACHR has adopted a definition of “corrective rape” as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.” “The essence of these crimes is punishment for non-normative sexualities and genders.” These attacks combine “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.” IACHR Report, quoting Keren Lehavot and Tracy L. Simpson, *Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities*, June 27, 2013.

³⁰¹ Interview with Andrea Ayala, San Salvador, Jan. 10, 2017.

³⁰² Interview with Diego, pseudonym, San Salvador, Jan. 12, 2017. (*No podría ir a la policía porque era lo mismo, querían violarme para corregirme.*)

³⁰³ Interviews with Mina, pseudonym, San Salvador, Jan. 12, 2017; Lucía, pseudonym, San Salvador, Jan. 12,

to “see how much they can take”³⁰⁴ and, for transgender women, possibly aimed at bursting breast implants.³⁰⁵ In contrast, when transgender men reported being beaten, they recalled law enforcement officers making comments suggesting that the beatings were aimed at challenging their male gender identity. For instance, Kelvin, a transgender man who lives in a suburb of San Salvador, recalled that, when a group of police and soldiers severely beat him in his neighborhood in December 2016, he was told “if you want to be a man, you have to take it like a man.” He did not report the incident for fear of reprisal.³⁰⁶ Alex Peña also reported that the police, while beating him in June 2015, kept repeating “Don’t you say you’re a man?”³⁰⁷

Some of the violence reported indicated disgust at the female gender expression of people that officers believed to be men. For example, as reported above, a patrol composed of soldiers and police made a group of *travestis* try to eat each other’s fake fingernails in a San Salvador suburb in late 2016.³⁰⁸

Several transgender men and transgender women reported police and soldiers threatening them in a way that degraded their gender identity.³⁰⁹ For example, Kelvin reported that a police officer, upon raiding his house in a San Salvador suburb in 2014, said that he could “give him a mercy shot” because Kelvin “shouldn’t exist.”³¹⁰ As this officer was leaving his house, he again threatened Kelvin by saying “now or later” he was going to “see [Kelvin’s] end.”³¹¹ In another instance, a police officer who stalked Kelvin in his neighborhood every day for a year, during 2013 and 2014, told Kelvin’s mom that she had “given birth to a woman” and that he was going to “make [Kelvin] a woman.”³¹² He did not report either incident for fear of reprisal.³¹³

2017; Juana, pseudonym, San Salvador, Jan. 10, 2017; Rosibel, pseudonym, San Salvador, Jan. 12, 2017.

³⁰⁴ Interview with Mina, pseudonym, San Salvador, Jan. 12, 2017. (*Para ver qué resistencia tienen.*)

³⁰⁵ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 142.

³⁰⁶ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Vos bicho querés ser, como bicho vas a aguantar.*)

³⁰⁷ Interview with Alex Peña, San Salvador, Jan. 13, 2017. (*¿No decís que sos hombre pues?*)

³⁰⁸ Interviews with Mina, pseudonym, San Salvador, Jan. 12, 2017; Rosibel, pseudonym, San Salvador, Jan. 12, 2017.

³⁰⁹ Interview with Juana, pseudonym, San Salvador, Jan. 10, 2017. See the Human Rights Defenders section above for her story.

³¹⁰ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*¿Sabes qué puedo hacer? Tirarte el tiro de gracia, en la frente te la pago y ahí se acaba todo, porque ustedes no deberían existir.*)

³¹¹ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*Tarde o temprano te tengo que ver el fin.*)

³¹² Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (*¿Sabes qué? Vos una mujer pariste y una mujer lo voy a hacer.*)

³¹³ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

Police Training

Salvadoran organizations defending the human rights of LGBT persons have conducted and participated in sensitization trainings attended by law enforcement officers. Assessment of the effectiveness of LGBT sensitization trainings on police officers is mixed among LGBT advocates. Andrea, a lesbian rights activist, and Sara, a transgender woman, asserted that many police officers who have undergone sensitization training have changed their behavior towards the LGBT community for the better;³¹⁴ by contrast, another transgender woman, Valentina, opined that the trainings have had little effect on the sensitivity of police.³¹⁵

One such training by the organization ASPIDH was attended in 2016 by current PNC Director Howard Cotto and current Minister of Justice and Security Mauricio Ramírez Landaverde, the former PNC Director.³¹⁶ Mónica Hernández, the director of ASPIDH, reported that both State officials seemed open to working with the LGBT community.³¹⁷ Sara, a transgender woman, recalled that in 2014, Mr. Landaverde, while PNC Director, issued a public apology on behalf of the PNC for police abuse against the LGBT community in general and against transgender man Alex Peña in particular.³¹⁸ In Sara's opinion, this apology helped because police officers may be motivated to act with more respect towards LGBT persons upon seeing their Director engaging with LGBT persons in a respectful way.³¹⁹

LGBT activists who facilitate these trainings often meet resistance. Wendy Castillo, a human rights activist at ASPIDH, reported that, while administering the trainings, she would try to teach officers to ask individuals, especially transgender individuals, what name they wish to be called and many officers would respond, "No, here on the DUI (ID) it says their name and that's what I'm going to call them even if they don't like it."³²⁰ After a week of trainings, Wendy overheard an officer say to a colleague, "I'm here only because I was forced to, because if one of my sons turns out to be a faggot, I would beat the hell out of him or send him to the hookers."³²¹

The researchers received some reports of positive interactions between LGBT persons and police officers. Notably, some of these positive interactions were associated with successful sensitization trainings taken by law enforcement officials and administered by CSOs promoting the rights

³¹⁴ Interviews with Andrea Ayala, San Salvador, Jan. 10, 2017; Sara, pseudonym, San Salvador, Jan. 11, 2017.

³¹⁵ Interview with Valentina, pseudonym, San Salvador, Jan. 11, 2017.

³¹⁶ Interview with Mónica Hernández, San Salvador, Jan. 11, 2017.

³¹⁷ Interview with Mónica Hernández, San Salvador, Jan. 11, 2017.

³¹⁸ Note that this was in 2014, so the PNC Director's apology was referring to incidents of ill treatment of Alex Peña by the police that preceded the notorious June 2015 incident after the pride event recounted above.

³¹⁹ Interview with Sara, pseudonym, San Salvador, Jan. 11, 2017.

³²⁰ Interview with Wendy Castillo, San Salvador, Jan. 9, 2017. (*No, si aquí en el DUI dice su nombre y yo así les voy a decir aunque no les guste.*)

³²¹ Interview with Wendy Castillo, San Salvador, Jan. 9, 2017. (*Yo estoy aquí porque de plano me obligaron, porque si a mí un hijo me sale culero, primero le sampo riata o lo mando donde las putas.*)

of LGBT persons. For example, Kelvin, a transgender man whose accounts of violence from police and military were discussed above, reported that on one occasion a police officer in a San Salvador suburb was initially confused because his ID did not match his gender expression, but then apologized and asked him how he liked to be addressed. The officer said he had received trainings and that he would pray for him and hope for the best for him.³²² Kelvin also reported that, during the search of his home in a San Salvador suburb in 2014 discussed above, where a police officer threatened his life, another police officer treated him respectfully, asking him about the progress of his transition and rebutting another officer by saying that people can live how they want.³²³ The researchers also received second-hand reports of positive interactions; for example, a physician for a clinic that helps LGBT patients reported a case of a police officer who helped a transgender woman find a person who had robbed her.³²⁴

The researchers received reports about the importance of education as a way of addressing the lack of knowledge about gender and sexuality issues among law enforcement officers, which may be a source of their violent actions against LGBT persons. In a 2014 study by ESMULES on the attitudes of the Salvadoran police force toward LGBTI persons, 413 PNC officers were tested on their knowledge about gender and sexuality issues; they got the right answer only half the time. For example, 70% of those tested confused sexual orientation with gender identity.³²⁵ The officers were also tested on their opinions and prejudices about LGBT persons. Officers who had received information on sexual diversity in the three years preceding the study had more favorable views about LGBT persons than did those who had not received such information within that period.³²⁶

The violence perpetrated against LGBT people by police and military engaged in law enforcement not only contravenes international and domestic law, it also deepens the distrust that LGBT people and the general population have of Salvadoran authority, thus fueling impunity. This precarious situation underscores the need for action on the part of the State, which should be taken in consultation with LGBT CSOs whose practitioners can voice the concerns of a community in dire need of comprehensive solutions.

³²² Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017. (The date of the incident was not specified.)

³²³ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

³²⁴ Interview with Dr. Modesto Mendizábal, San Salvador, Jan. 13, 2017.

³²⁵ Only half of the 413 PNC officers reported having received information about sexual diversity in the three years preceding the study; of those, about half reported that their main source of information had been the National Academy of the PNC, yet only 33% of them thought the information they learned at the Academy was “complete.” This suggests the National Academy of the PNC should make its curriculum on gender and sexuality more robust. ESMULES, CIPAC, *Evaluación de Actitudes hacia las personas LGBTI por parte de las Fuerzas Policiales de El Salvador*, 2014, pp. 14-18, 21, 24.

³²⁶ On a scale between 0 (negative) and 100 (positive), the officers averaged an unsatisfactory 54.2, with a low standard deviation indicating their attitudes were relatively homogeneous. ESMULES, CIPAC (2014), *Evaluación de Actitudes hacia las personas LGBTI por parte de las Fuerzas Policiales de El Salvador*, pp. 14-18, 21, 24.

BARRIERS IN ACCESS TO JUSTICE

The research for this report revealed significant institutional barriers that impede the ability of lesbian, gay, bisexual, and transgender individuals to access justice throughout the legal system. While the impunity rate in El Salvador is staggeringly high, LGBT Salvadorans face barriers in accessing justice that go beyond those faced by the general public.³²⁷ Regardless of the identity of the perpetrator, the State is required to provide non-discriminatory access to justice. For instance, the interviews revealed many cases of gang violence followed by inaction on the part of the police. The evidence of discriminatory animus in barriers faced by LGBT people interviewed was particularly concerning.

The research and interviews conducted for this report showed barriers in access to justice due to the actions or omissions of State actors throughout the justice process. The main State actors in this process are the police and the *Fiscalía* (Public Prosecutor's Office). Some interviewees indicated that the involvement of the Human Rights Ombudsperson's Office (PDDH) and the Secretariat of Social Inclusion could be very beneficial to LGBT victims of crimes when attempting to access the justice system.

These barriers indicate a failure of the Salvadoran government to fulfill its obligations to provide redress for victims of human rights abuses and to provide equal protection under the law. This is particularly true when victims were unable to access the justice system after experiencing violence at the hands of State actors. The researchers also found evidence of human rights violations perpetrated against individuals during their attempt to access the justice system, particularly when filing complaints with the police. These barriers foster impunity, discourage the reporting of crimes, and foster mistrust of the justice system by LGBT people and the general population.

Legal Summary

Access to justice is a fundamental requirement for effective rule of law.³²⁸ El Salvador has wide ranging obligations to exercise due diligence in the investigation, punishment, and redress of human rights violations against LGBT people.³²⁹ El Salvador's satisfaction of access to justice measures is vital to satisfying their obligation to prevent and combat impunity under the jurisprudence of the Inter-American System. Impunity is defined as "an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights."³³⁰

³²⁷ The impunity rate for homicides in El Salvador is around 94%. Roque Planas, *How El Salvador Became the World's Most Violent Peacetime Country*, WorldPost, Mar. 4, 2016, available at: http://www.huffingtonpost.com/entry/el-salvador-most-violent-country_us_56d9e239e4b0000de4047fbe, accessed on March 24, 2017.

³²⁸ United Nations and the Rule of Law, *Access to Justice*, available at: <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>, accessed on March 24, 2017.

³²⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 385.

³³⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex*

The Inter-American Commission on Human Rights (IACHR) has emphasized that the Organization of American States (OAS) should “adopt measures to guarantee the life and personal integrity of those who report . . . prejudice based violence.”³³¹ This security is necessary for ensuring that victims have adequate access to justice, as required under international law, and that there is not impunity for human rights violations.³³² The case of Alexa Rodriguez indicates the possible international legal consequences that barriers to reporting crimes may have. Alexa is a Salvadoran transgender woman who filed a petition with the IACHR alleging “attacks against her life” by gangs and the National Civil Police (PNC).³³³ Alexa was unable to file a complaint because members of the PNC refused to accept her complaint on multiple occasions.³³⁴ While the IACHR has yet to rule on the merits of Alexa’s case, it did make a preliminary decision that her complaint qualified for an exception from the requirement to exhaust domestic remedies, allowing her case to proceed to the merits stage.³³⁵

El Salvador has international legal obligations to exercise due diligence in investigating violence against LGBT people.³³⁶ These investigations should be exhaustive and impartial in order to ensure that such violence is discouraged, particularly when committed by State actors.³³⁷ In the case of violations by police officers, military personnel, or other State actors, this obligation is compounded by El Salvador’s responsibility for the violent acts.

Furthermore, information on a victim’s sexual orientation and gender identity is key to an effective investigation.³³⁸ In order to satisfy the State’s obligations to prevent and respond to human rights violations, accurate and disaggregated data on violence against LGBT individuals is imperative.³³⁹ This data would allow El Salvador to track violence against LGBT individuals, provide for public policies to decrease this violence, and avoid providing impunity for the

Persons in the Americas, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 475.

³³¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, p. 272.

³³² Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 438.

³³³ IACHR, Report No. 73/16, Petition 2191-12, *Admissibility Report, Alexa Rodríguez, El Salvador*, Dec. 6, 2016, para. 1.

³³⁴ IACHR, Report No. 73/16, Petition 2191-12, *Admissibility Report, Alexa Rodríguez, El Salvador*, Dec. 6, 2016, para. 2-5. Complaint was found admissible under, inter alia, Articles 5, 8, 11, 13, 24, and 25 of the American Convention on human rights.

³³⁵ IACHR, Report No. 73/16, Petition 2191-12, *Admissibility Report, Alexa Rodríguez, El Salvador*, Dec. 6, 2016, para. 7.

³³⁶ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 385.

³³⁷ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 476.

³³⁸ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, pp. 258-60.

³³⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 267.

perpetrators.³⁴⁰ An effective investigation into the murder of, or act of violence committed against, a lesbian, gay, bisexual and/or transgender individual requires diligently investigating the possibility of discriminatory animus.³⁴¹ This is especially true in order to effectively implement El Salvador's new hate crimes legislation, as explained above. This information should be disaggregated according to the victims' particular sexual orientation and/or gender identity, and not use LGBT as a catchall, as risk factors for violence can be different based on an individual's particular sexual orientation and/or gender identity.³⁴² It is also important that investigators not allow "bias-based assumptions" to taint their investigative efforts, but rather conduct "serious and impartial investigations."³⁴³

Barriers to Reporting Crimes

Many LGBT people, particularly transgender individuals, who have attempted to file a complaint with the police reported facing significant obstacles, including further violations of their rights. This prevented the filing of complaints, or caused major difficulties. There were also many individuals who reported never attempting to file a complaint, because of the difficulties faced by others.

Impediments to Filing a Complaint

A major barrier to filing complaints is the use of coercive mechanisms by police to discourage the filing of, or refusal to accept, complaints.³⁴⁴ These tactics include bribery, threats, violence, and ridicule from police officers. Strikingly, reporting to the police has led to further human rights abuses for some LGBT people.³⁴⁵ This danger is illustrated by the case of Ambar, also discussed above. In 2011, Ambar, a transgender woman, went to make a complaint about the violence to which she was being subjected.³⁴⁶ The police officer she was making the complaint to locked his door, tried to demand sex from Ambar, and ejaculated on her.³⁴⁷ These coercive mechanisms can be particularly exacerbated when attempting to report violence from other police officers.³⁴⁸

³⁴⁰ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, paras. 392, 394.

³⁴¹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, pp. 258-60.

³⁴² Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 267.

³⁴³ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 23.

³⁴⁴ Interview with Deisy, pseudonym, San Salvador, Jan. 10, 2017.

³⁴⁵ El Salvador is responsible for the acts and omissions of its agents even when they are acting illegally or otherwise outside their permitted authority. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 437; Interviews with Ambar Alfaro, San Salvador, Jan. 9, 2017; Miguel, pseudonym, San Salvador, Jan. 9, 2017.

³⁴⁶ Interview with Ambar Alfaro, San Salvador, Jan. 9, 2017.

³⁴⁷ Interview with Ambar Alfaro, San Salvador, Jan. 9, 2017.

³⁴⁸ Interviews with Wendy Castillo and Nathaly Camila Portillo, San Salvador, Jan. 9, 2017; Graciela, San Salva-

Transgender women reported being ridiculed or blamed when attempting to report a crime to the police.³⁴⁹ Victim blaming can be particularly prevalent for transgender women who are sex workers, one transgender woman reported that police blame them for discrimination because as a sex worker they are asking for it.³⁵⁰ In some cases there are clear indicators that this ridicule was motivated by discriminatory animus on the basis of the individual's sexual orientation and/or gender identity—in violation of international and domestic law.³⁵¹ For example, Bianca was mocked by the police, who insulted her using a derogatory term for being homosexual.³⁵² Such abuse makes it very difficult, and risky, to report crimes, particularly when the perpetrator is a member of the police or military.

Beyond direct coercion, another initial obstacle for individuals is the refusal or failure of the police to receive a complaint when the perpetrator is not readily identifiable.³⁵³ In the context of police violence, the identifying information is often a badge number. This is particularly concerning due to reports that police personnel cover their badges or order individuals to keep their eyes down so that their badge number cannot be identified.³⁵⁴ As one victim explained, some police do not wear their identifying number, and soldiers sometimes wear masks.³⁵⁵

Through the information researchers received from interviews, it appears there are two forms of complaints that can be filed: a complaint (*denuncia*) or an *aviso*. While a *denuncia* does require more specific identifying information about the perpetrator, an *aviso* has no such requirement.³⁵⁶ The interviews indicate that the identification requirement is being used to prevent lesbian, gay, bisexual, and transgender individuals from filing complaints with the police.³⁵⁷

dor, Jan. 10, 2017.

³⁴⁹ Interviews with Bianca, pseudonym, San Salvador, Jan. 10, 2017; Natalia, pseudonym, San Salvador Jan. 9, 2017; Dr. Modesto Mendizábal, San Salvador, Jan. 13, 2017.

³⁵⁰ Interview with Patricia, pseudonym, San Salvador, Jan. 9, 2017.

³⁵¹ The IACHR outlines elements that may be indicative of discriminatory intent. Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 504.

³⁵² Interviews with Bianca, pseudonym, San Salvador, Jan. 10, 2017; Patricia, pseudonym, Jan. 9, 2017; Natalia, pseudonym, Jan. 9, 2017; Dr. Modesto Mendizábal, Jan. 13, 2017.

³⁵³ Interviews with Patricia, pseudonym, San Salvador, Jan. 9, 2017; Bianca, pseudonym, San Salvador, Jan. 10, 2017.

³⁵⁴ Interviews with Wendy Castillo and Nathaly Camila Portillo, San Salvador, Jan. 9, 2017; Kelvin, pseudonym, San Salvador, Jan. 12, 2017; Sara, pseudonym, San Salvador, Jan. 11, 2017; Rodrigo, pseudonym, San Salvador, Jan. 12, 2017; Kelvin, pseudonym, San Salvador, Jan. 12, 2017.

³⁵⁵ Interview with Rodrigo, pseudonym, San Salvador, Jan. 12, 2017.

³⁵⁶ Interview with Juan Pablo Ramos Orellana, Director of the Office of Legal Aid and Coordinator of Judicial Practice, Universidad Centroamericana “José Simeón Cañas,” San Salvador, Jan. 13, 2017.

³⁵⁷ Interview with Patricia, pseudonym, San Salvador, Jan. 9, 2017.

Unreported Crimes

Perhaps the largest barrier in access to justice is that many individuals we spoke with indicated that they did not, and would not, attempt to report a crime. There are a number of compounding factors that led interviewees to the decision not to report a crime, including: fear of retribution by police or military; fear that reporting will expose them to more abuse during reporting;³⁵⁸ threats;³⁵⁹ belief that reporting is futile;³⁶⁰ and lack of knowledge on how to report a crime.³⁶¹ Many of these fears are based on knowledge of what has happened to other LGBT people who reported crimes.³⁶² In a recent hearing before the IACHR, activists emphasized that the 24-hour hotline intended to provide information regarding how and where to present complaints is not available for 24 hours a day.³⁶³ This illustrates the stifling power that impunity and negative treatment of victims can have on the reporting of crimes.

Upon being asked if he had ever tried to report the violence he faced from police and military, Kelvin, a transgender man, explained. "If you see statistics of people that have had the courage to do so [file a complaint], they have to deal with consequences of that. These people are vengeful and if you file a complaint they can end up in jail, and sooner or later they'll come out and they will never forget your face."³⁶⁴ He further explained that, "it's very risky to file a complaint, because like it or not, for a complaint like that tomorrow you may not exist."³⁶⁵ Kelvin hopes to leave El Salvador because of the violence he faces, but said that before he left he would file complaints about the violence he has faced. Kelvin emphasized that he shared his story, "because I don't want future generations to go through the same thing."³⁶⁶

Lack of security for victims of crimes when reporting inhibits the filing of complaints. One major issue regarding security is the lack of confidentiality of reports. Many victims believe that

³⁵⁸ Interview with Víctor Manuel, pseudonym, San Salvador, Jan. 12, 2017.

³⁵⁹ Interview with Emilia, pseudonym, San Salvador, Jan. 9, 2017.

³⁶⁰ Interviews with Emilia, pseudonym, San Salvador, Jan. 9, 2017; Miguel, pseudonym, San Salvador, Jan. 9, 2017.

³⁶¹ Interview with Valentina, pseudonym, San Salvador, Jan. 11, 2017.

³⁶² Interview with Víctor Manuel, pseudonym, San Salvador, Jan. 12, 2017.

³⁶³ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

³⁶⁴ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017 (*Si usted se fija en las estadísticas de personas que sí tienen el valor de hacer eso [file a complaint] es porque se atienden a las consecuencias, porque tarde o temprano acuérdesese que son personas rencorosas que pueden tomar represalias por eso. Recuérdese que si uno pone una denuncia ellos pueden ir hasta presos y tarde o temprano ellos van a salir y de nuestra cara nunca se van a olvidar.*)

³⁶⁵ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017 (*Ahora está difícil poner una denuncia, porque quíerese o no, quién quita por una denuncia el día de mañana ya no exista.*)

³⁶⁶ Interview with Kelvin, pseudonym, San Salvador, Jan. 12, 2017 (*Por mí no hay problema, por mí que se den cuenta de mi historia, porque no quiero que otras generaciones vengan a pasar por lo mismo.*)

they will be at risk because the person they are reporting will be told that a report was made.³⁶⁷ There is even distrust of the *Inspectoría*, which is in charge of internal investigations of the police, when making a report about another officer.³⁶⁸ In relation to gangs, the researchers heard reports that it is risky to be seen talking with the police, as these conversations can get back to gang members.³⁶⁹ The case of Carmen, a transgender woman, is particularly illustrative of this danger.³⁷⁰ She filed a complaint about a gang with the police and shortly thereafter the gang leader showed up at her house and told her she had hours to get out.³⁷¹ When she asked how he knew about the complaint, the gang leader said he was more powerful than the police.³⁷² Carmen was forced to flee El Salvador after this incident.³⁷³

Successes

Due to the PDDH's involvement, a number of complaints have found more success.³⁷⁴ For example, in 2010 Mónica Hernández was detained during an inspection of a bus by police officers; the PDDH responded to her phone call and came to the police station.³⁷⁵ Mónica was eventually able to file a complaint, partially due to identifying herself as a human rights defender and the presence of the PDDH.³⁷⁶ The PDDH and the Office of the Police Inspector were also contacted and responded when Alex Peña was detained and beaten in 2015, and demanded that Alex be brought to the hospital.³⁷⁷

Barriers to Effective Investigation

Lesbian, gay, bisexual, and transgender victims and activists told researchers that the police do not properly investigate cases of violence against LGBT people.³⁷⁸ Human rights defenders recently noted that this failure to investigate is almost absolute for attacks against human

³⁶⁷ Interviews with Deisy, pseudonym, San Salvador, Jan. 10, 2017; Karla Guevara, San Salvador, Jan. 10, 2017; Carmen, pseudonym, San Salvador, Jan. 10, 2017; Sara, pseudonym, San Salvador, Jan. 11 2017; Víctor Manuel, pseudonym, San Salvador, Jan. 12, 2017; Graciela, pseudonym, San Salvador, Jan. 10, 2017.

³⁶⁸ Interview with Karla Guevara, San Salvador, Jan. 10, 2017.

³⁶⁹ Interviews with Emilia, pseudonym, San Salvador, Jan. 9, 2017; Sara, pseudonym San Salvador, Jan. 11, 2017; Carmen, pseudonym, San Salvador, Jan. 10, 2017.

³⁷⁰ Interview with Carmen, pseudonym, San Salvador, Jan. 10 2017.

³⁷¹ Interview with Carmen, pseudonym, San Salvador, Jan. 10 2017.

³⁷² Interview with Carmen, pseudonym, San Salvador, Jan. 10 2017.

³⁷³ Interview with Carmen, pseudonym, San Salvador, Jan. 10 2017.

³⁷⁴ Interview with Natalia, pseudonym, San Salvador, Jan. 9, 2017.

³⁷⁵ Interview with Mónica Hernández, San Salvador, Jan. 10, 2017.

³⁷⁶ Interview with Mónica Hernández, San Salvador, Jan. 10, 2017.

³⁷⁷ Interview with Karla Avelar, San Salvador, Jan. 10, 2017.

³⁷⁸ Interviews with FESPAD, San Salvador, Jan. 12, 2017; Graciela, pseudonym, San Salvador, Jan. 10, 2017; Patricia, pseudonym, San Salvador, Jan. 9, 2017; Mina, pseudonym, San Salvador, Jan. 10, 2017; Susana, pseudonym, San Salvador, Jan. 9, 2017; Juana, pseudonym, San Salvador, Jan. 10, 2017.

rights defenders.³⁷⁹ A failure to diligently investigate crimes can lead to impunity and repeated violations as evidenced by the case of Mina, whose case of being abused by police officers is discussed above.³⁸⁰ Mina reported this event to the police three times, but did not see any results.³⁸¹ While she was making the complaint, she was told, “perhaps we (she and her friends) had attacked them (the police).”³⁸² Roughly a month later she was detained by the same police officers who had assaulted her, and was assaulted again.³⁸³ Mina reported this to the same authorities, who took evidence, but she has not seen anything come of it.³⁸⁴

Another barrier to effective investigations of crimes against LGBT people occurs when victims are not properly identified according to their sexual orientation and/or gender identity. While the PNC and *Fiscalía* did state that they record the sexual orientation and gender identity of a victim in their records, they did not indicate that they disaggregate this data beyond the umbrella term of LGBT.³⁸⁵ The *Fiscalía* also acknowledged that they may not always be aware of a victim’s sexual orientation and gender identity because responding police officers may not know how to properly ascertain that information about the victim.³⁸⁶

The interviews conducted for this report revealed that investigators may be allowing bias-based assumptions to impede serious, impartial, and exhaustive investigations. For example, José Acosta reported that his partner, a homosexual man, was killed by many stab wounds. Despite the nature of his death, the police insisted on ruling it a suicide.³⁸⁷ Transgender victims and activists for transgender rights also made statements indicating that there was a general understanding that transgender individuals were more likely to be arrested when police respond to an incident.³⁸⁸ This understanding is supported by specific accounts where transgender individuals were arrested or detained when they were actually the victims of crimes.³⁸⁹ For example, Alex Peña was removed from the hospital one night after being beaten and detained by police officers and taken into detention again.³⁹⁰ Karla Avelar was also removed from the hospital and detained after an attempt on her life that left her with nine bullet wounds.³⁹¹ The researchers heard reports

³⁷⁹ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

³⁸⁰ Interview with Mina, pseudonym, San Salvador, Jan. 10, 2017.

³⁸¹ Interview with Mina, pseudonym, San Salvador, Jan. 10, 2017.

³⁸² Interview with Mina, pseudonym, San Salvador, Jan. 10, 2017 (*Nos dijeron que “quizás nosotros les habíamos agredido.”*).

³⁸³ Interview with Mina, pseudonym, San Salvador, Jan. 10, 2017.

³⁸⁴ Interview with Mina, pseudonym, San Salvador, Jan. 10, 2017.

³⁸⁵ Interviews with the *Fiscalía*, San Salvador, Jan. 12, 2017; the PNC, San Salvador, Jan. 13, 2017.

³⁸⁶ Interview with the *Fiscalía*, San Salvador, Jan. 12, 2017.

³⁸⁷ Interview with José Acosta, San Salvador, Jan. 11, 2017.

³⁸⁸ Interviews with Wendy Castillo and Nathaly Camila Portillo, San Salvador, Jan. 9, 2017; Karla Avelar, San Salvador, Jan. 10, 2017.

³⁸⁹ Interview with Graciela, pseudonym, San Salvador, Jan. 10, 2017.

³⁹⁰ Interview with Alex Peña, San Salvador, Jan. 13, 2017.

³⁹¹ Interview with Karla Avelar, San Salvador, Jan. 10, 2017.

of transgender individual's being arrested or blamed for altercations where they were acting in self-defense.³⁹² Some of these arrests included explicit indications of discriminatory animus due to the arrestee's sexual orientation and/or gender identity. For example, one transgender woman reported the police saying, "I hate faggots," as their reason for arresting her friend.³⁹³ Another transgender woman reported trying to help her friend, who was a transgender man, when he was being arrested. When she asked why he was being detained the police responded that it was because they wanted to.³⁹⁴

Finally, many LGBT people are estranged from their families, who may not insist on thorough investigations.³⁹⁵ Therefore, the IACHR has stated that it is imperative to recognize the victims' "social family" as agents for the victim.³⁹⁶ However, interviews indicate that non-family members may not be respected as agents for victims. For instance, when José Acosta challenged the investigators about ruling his partner's death a suicide, as discussed above, the investigators responded that he was not a family member and could not be involved.³⁹⁷ Human rights defenders who responded to help Alex Peña when he was detained and beaten by the police were also asked if they were his family members.³⁹⁸

When combined with the difficulties LGBT people face in reporting crimes, these findings lead to an overwhelming distrust of law enforcement, which stifles the reporting of crimes, and further marginalizes LGBT people. Speaking about police officers, Karla Avelar, a transgender activist, explained: *"Far from making us feel safe and trusting, what they provoke in us is fear. There is no professionalism among the police, no commitment to respect citizens. To the police in this country, just by being trans, gay, or from other marginalized populations, you are a criminal. If you are poor, you are a criminal. If you are gay, you are a criminal. If you are trans, criminal. They generalize you and label you with labels that end up stigmatizing you and criminalizing you. You can be sure that if a transgender woman commits a felony, she is prosecuted and convicted, but if a transgender woman is the victim, the aggressor goes free."*³⁹⁹

³⁹² Interviews with Karla Avelar, Jan. 10, 2017; Diego, pseudonym, San Salvador, Jan. 12, 2017; Deisy, pseudonym, San Salvador, Jan. 10, 2017; Rosibel, pseudonym, San Salvador, Jan. 12, 2017.

³⁹³ Interview with Emilia, pseudonym, San Salvador, Jan. 9, 2017.

³⁹⁴ Interview with Susana, pseudonym, San Salvador, Jan. 9, 2017.

³⁹⁵ Interviews with Andrea Ayala, San Salvador, Jan. 10, 2017; José Acosta, San Salvador, Jan. 11, 2017; Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 511.

³⁹⁶ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 511.

³⁹⁷ Interview with José Acosta, San Salvador, Jan. 11, 2017.

³⁹⁸ Interview with Villy Rivera, San Salvador, Jan. 12, 2017.

³⁹⁹ Interview with Karla Avelar, San Salvador, Jan. 10, 2017. (*Lejos de causarnos confianza y seguridad, pues lo que nos causa es miedo. No hay ese profesionalismo de la policía, no hay esa convicción de respetar a la ciudadanía. La policía de este país, por el simple hecho de ser trans, gay y otras poblaciones que están por ahí, sos criminal. Sos pobre y para ellos sos criminal. Sos gay y para ellos sos criminal. Sos trans, criminal. Te generalizan y te etiquetan con ciertas etiquetas que te terminan estigmatizando y criminalizando. Ten por seguro que si*

Gaps in Application of the Law and Data

Access to justice requires due diligence to ensure the effective punishment and redress of violations against LGBT people.⁴⁰⁰ Researchers heard of very few instances where there was a judicial decision in a case involving violence against an LGBT person, possibly as a result of the extensive barriers to reporting crimes. There was evidence that the prosecutor's office and the judicial system impede access to effective punishment and redress.

One barrier to effective prosecution is the failure to apply the hate crimes legislation. This law provides for increased sentencing penalties for hate crimes in the form of homicide or verbal assault against LGBT people and other protected groups. While this is a potentially useful tool, there are concerns about whether it is being properly utilized.⁴⁰¹ When asked, the *Fiscalía* was unable to point to any case involving an LGBT victim where this legislation was applied.⁴⁰² In response to formal requests for information by the researchers, the *Fiscalía* stated that the application of the hate crimes reforms to the Salvadoran Criminal Code in specific cases is not systematically tracked or recorded in their system, but that, if the hate crimes provision was relevant in a case, it would be applied according to law.⁴⁰³ Given the amount of violence against LGBT persons in El Salvador, it is concerning that the *Fiscalía* does not track the application of this new code and cannot point to any concrete instances of its successful application. This apparent failure to apply the law was reflected in the interviews conducted with activists and other government officials. Assemblywoman Cristina Cornejo (from the FMLN party) stated that the hate crimes reforms, which she saw as a significant achievement of the Legislative Assembly, “have been useless so far” because they have not been applied by the *Fiscalía* and other relevant authorities.⁴⁰⁴ Many interviewees indicated that the hate crimes legislation was not being properly utilized, and stated they did not know of an instance where it had been applied.⁴⁰⁵

The interviews indicated deficiencies in how the *Fiscalía* is handling cases of violence against LGBT individuals and communicating on their status. Interviewees reported that the *Fiscalía* will shelve, instead of prosecute, cases where transgender individuals are the victims.⁴⁰⁶ In the case

una trans comete un delito es procesada y condenada. Pero ten por seguro que si la mujer trans es la víctima, el victimario queda libre.)

⁴⁰⁰ Inter-American Commission on Human Rights, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OAS/Ser.L/V/II.rev.1 Doc. 36, Nov. 12, 2015, para. 385.

⁴⁰¹ Interview with Assemblywoman (Diputada) Cristina Cornejo, San Salvador, Jan. 11, 2017.

⁴⁰² Interview with the *Fiscalía*, San Salvador, Jan. 12, 2017.

⁴⁰³ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017.

⁴⁰⁴ Interview with Assemblywoman (Diputada) Cristina Cornejo, San Salvador, Jan. 11, 2017 (*No ha servido de nada hasta el momento.*)

⁴⁰⁵ See, e.g., Interview with Karla Guevara, San Salvador, Jan. 10, 2017; IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

⁴⁰⁶ Interviews with FESPAD, San Salvador, Jan. 12, 2017; Graciela, pseudonym, San Salvador, Jan. 10, 2017.

of Alex Peña, a prosecutor told FESPAD that they were instructed to shelve the case.⁴⁰⁷ LGBT human rights defenders also reported that they are not able to get information on the status of pending cases from the *Fiscalía* when they request it; for instance, they have not received requested information on the investigation into the April 2013 murder of Tania Vázquez, a transgender woman.⁴⁰⁸ Finally, in an interview the *Fiscalía* stated that although they keep records of LGBT victims, they do not have a specialized protocol for investigating crimes against LGBT persons; the fact that a victim was lesbian, gay, bisexual, and/or transgender is simply taken into consideration by the investigators (there was no explanation as to how this information affects the investigation).⁴⁰⁹

A Dearth of Data

The research conducted for this report exposed a concerning lack of data from the PNC and *Fiscalía* on complaints taken involving LGBT people and the outcome of their cases. The researchers submitted three information requests to the *Fiscalía* on February 6th and 7th, 2017. These requests asked for information on the number of cases of homicides and/or threats which had been presented to the *Fiscalía* from September 2015 to February 2017 in which the motive was presumed to be the gender identity and/or sexual orientation of the victim. Additionally, the researchers requested information on cases in which the *Fiscalía* began investigative or judicial proceedings, as well as how many went to trial or sentencing, and in which of those cases the hate crimes aggravated sentence was applied.

In response to this request, the *Fiscalía* provided information on the number of cases they were aware of with threats against, or homicides of, a lesbian, gay, bisexual, and/or transgender individual since September of 2015, including information on actions taken by the *Fiscalía* in response.⁴¹⁰ However, they stated that they do not track whether the aggravated sentences provided for in the hate crimes legislation were applied in any case, and do not track if any of the cases went to trial.⁴¹¹ The PDDH also reported that they had requested information from the *Fiscalía* on the application of the new hate crimes legislation in February of 2016, but as of February 2017 had not received a response.⁴¹²

⁴⁰⁷ Interview with FESPAD, San Salvador, Jan. 12, 2017.

⁴⁰⁸ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

⁴⁰⁹ Interview with the *Fiscalía*, San Salvador, Jan. 12, 2017. In an IACHR hearing on March 21, 2017 the Salvadoran government reported that the *Fiscalía* was training 55 prosecutors on how to prosecute crimes against LGBT persons, but non-governmental organizations reported that they had no knowledge of this initiative even though they had met with the *Fiscalía* recently. IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

⁴¹⁰ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017.

⁴¹¹ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017.

⁴¹² Human Rights Ombudsperson's Office, *First Situational Report on Hate Crimes committed against the LGBTI population*, March 2, 2017.

Furthermore, the data the researchers do have point to alarming rates of impunity, and low rates of reporting, in crimes committed against LGBT people. There is a concerning disparity between the number of crimes against LGBT persons recorded by the government, and those recorded by LGBT human rights organizations. This data corroborates reports that the laws on the books are not being properly applied.⁴¹³

According to the information provided by the *Fiscalía* on February 22nd, in response to the researchers' request, they had information on 16 murders of and 4 threats against LGBT people from September of 2015 to February 17, 2017.⁴¹⁴ The *Fiscalía* initiated proceedings in only three of these cases.⁴¹⁵ None of them have reached a public hearing stage.⁴¹⁶ However, in an IACHR hearing on March 21, 2017, the Salvadoran government reported that from December 2014 to March 3, 2017, the *Fiscalía* has investigated 109 cases involving LGBT victims and brought 12 cases to trial.⁴¹⁷ Non-governmental organizations (NGOs) have kept their own record of cases of violence against LGBT people. COMCAVIS's records show that more than 600 lesbian, gay, bisexual, and/or transgender individuals have been murdered since 1993, with 42 murders in 2014, 37 murders in 2015, and 41 murders in 2016.⁴¹⁸ The disparity in these numbers is striking. According to the *Fiscalía*'s response to researchers' questions, in 2016 alone, the *Fiscalía* has record of less than five percent of the homicides recorded by COMCAVIS.⁴¹⁹ The disparity between the government's statistics and NGO numbers show that the barriers to justice are potentially leading to a shockingly low reporting rate, and the near zero number of cases where the *Fiscalía* took action indicates that the impunity rate for crimes against LGBT individuals is extremely high.

⁴¹³ Interview with Assemblywoman (*Diputada*) Cristina Cornejo, San Salvador, Jan. 11, 2017.

⁴¹⁴ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017, citing *Department of Statistics according to records of SIGAP to date 02/17/2017, 09:56:59 a.m.*

⁴¹⁵ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017, citing *Department of Statistics according to records of SIGAP to date 02/17/2017, 09:56:59 a.m.*

⁴¹⁶ *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017.

⁴¹⁷ IACHR hearing on the Human Rights Situation of LGBTI People in El Salvador, Washington, D.C., March 21, 2017.

⁴¹⁸ The yearly murders are also broken down by the victim's sexual orientation and gender identity: in 2014, 29 transgender and 3 gay men were murdered; in 2015, 33 transgender, 1 lesbian, and 3 gay men were murdered; in 2016, 40 transgender and one gay man were murdered. Interview with Karla Avelar, San Salvador, Jan. 10, 2017.

⁴¹⁹ In 2016 the *Fiscalía* reported only 2 homicides. *Fiscalía General de la República*, Unit of Access to Public Information, *Resolution to Information Request N° 43-UAIP-FGR-2017*, Feb. 21, 2017, citing *Department of Statistics according to records of SIGAP to date 02/17/2017, 09:56:59 a.m.*

CONCLUSION & RECOMMENDATIONS

This report contributes to a growing body of research confirming a pattern of systemic discrimination and violence against LGBT people by Salvadoran law enforcement. Not only do they face societal prejudice, but the state itself—through police, military, and judicial actors—continually violates their human rights with impunity. The human rights violations documented in this report originate from international human rights obligations accepted by the Salvadoran government. State actors subject LGBT people to physical and mental abuse on a regular basis, partaking in arbitrary and discriminatory acts of violence. Further, the rate of impunity is staggering. These agencies fail to investigate, prosecute, and punish violations by non-state actors, and it became clear to the researchers that they actively discouraged—by way of threats and more violence—lesbian, gay, bisexual, and transgender victims from reporting violence committed by State actors. Additionally, no State agency collects or retains data on violations of LGBT rights. Without this data, it is impossible for the Salvadoran government to identify patterns of violence and to keep a record of cases and complaints.

Based on extensive interviews with human rights defenders, legal experts, and State officials, the researchers developed recommendations with respect to key actors. These are designed not only to guide law enforcement, judicial, and political practice domestically, but to assist international organizations and governments in promoting the welfare of LGBT people in El Salvador.

RECOMMENDATIONS

National and Municipal Police

Recruitment and Training

- Recruit and integrate more women and LGBT officers into the national and municipal police forces (PNC and CAM).
- With the help of civil society, develop and implement expanded trainings for police officers about issues of gender and sexuality. Trainings should prioritize patrol officers and should also be incorporated into the academy syllabus.
- Incorporate training on human rights, with particular attention to the rights of LGBT people, into joint trainings with military officials deployed in anti-gang task forces.

Complaint Process

- Allow transgender women to utilize currently existing intake centers designed to support female victims.
- Create a confidential and secure intake system to ensure the protection of LGBT people reporting hate-based violence or crimes.

Investigation

- Where the victim's sexual orientation, gender identity, or human rights work may be a motivating factor in the crime, the police should diligently collect evidence on and investigate these factors, ensuring that they are clearly identified in the complaints procedure as having been addressed.
- In cases of homicide, allow for close friends or cohabitants, in addition to family members, to request information about and request the initiation of an investigation.

Data

- Record victims' self-described sexual orientation and gender identity during the complaint process. This is imperative for tracking hate crimes, as risk factors and motivation for violence vary based on victims' identities.

Human Rights Defenders

- Respect the status and legitimacy of human rights organizations and defenders.
- Refrain from raiding offices of human rights organizations or subjecting defenders to heightened policing.
- Publicly condemn violations of defenders' rights.

Military**Transparency**

- Address the issue of military violence against LGBT people. Publicly announce a plan to train soldiers, improve the quality of investigations, and create paths to accountability for those who commit human rights violations.
- Publish the rules of engagement for military involved in law enforcement in accordance with international human rights standards. Include specific protections addressing the unique needs and threats that LGBT people face.

Training

- Publish guidelines for, and provide trainings on, engagement with LGBT persons that raises awareness of the specific threats they face. These trainings should be developed in coordination with civil society and the Office of Human Rights within the military.

Complaint Process

- Provide public guidance on the process for filing complaints against soldiers who commit human rights abuses while engaged in law enforcement.
- Create an effective, independent accountability mechanism to receive and promptly investigate complaints against members of the military.

Data

- Record victims' self-described sexual orientation and gender identity during the complaint process. This is imperative for tracking hate crimes, as risk factors for violence vary based on victims' identities.

Fiscalía General de la República**Complaints and Investigations**

- Create a confidential and secure means for LGBT people to file complaints, particularly against members of the police and military. Appropriate measures include providing reporting rooms that are tailored to the needs of LGBT people and training employees to receive complaints.
- Create a special unit tailored to the prosecution of crimes against LGBT people.
- Develop guidelines and trainings specific to the investigation and prosecution of crimes against LGBT victims in concert with civil society.
- In cases of homicide, allow for close friends or cohabitants, in addition to family members, to request information about and request the initiation of an investigation.
- Train prosecutors to apply articles 129 and 155 of the Salvadoran Criminal Code as amended by the hate crimes reforms of Legislative Decree 106.
- Train prosecutors to interact respectfully with LGBT victims, defendants, and witnesses, using correct pronouns and names.

Data

- Develop and implement a data collection system tracking victims' self-described sexual orientation and gender identity.
- Publish an annual report on hate crimes and associated investigations, prosecutions, and convictions disaggregated by sexual orientation and gender identity.

Public Defender's Office

- Train attorneys to address the specific needs of LGBT people accused of crimes.

Judiciary

- Train judges to apply articles 129 and 155 of the Salvadoran Criminal Code as amended by the hate crimes reforms of Legislative Decree 106.
- Train judges to interact respectfully with LGBT victims, defendants, and witnesses, using correct pronouns and names.

Executive

- The President should make public statements showing full support for the LGBT population, condemning the violence perpetrated against them, and calling for the prompt and effective investigation of all hate crimes.
- Sign the Inter-American Convention Against All Forms of Discrimination and Intolerance.

Legislative Assembly

- Pass a gender identity law, developed in concert with civil society organizations, allowing people to change the gender listed on birth certificates and other government documentation.
- Pass a law requiring agencies such as the PNC, CAM, military, and *Fiscalía* to collect data on the self-described sexual orientation and gender identity of victims and publish periodic reports on the status and outcomes of cases disaggregated by identity.
- Codify Presidential Decree No. 56 and include an effective and accessible enforcement mechanism to address discrimination by public employees.
- Ratify the Inter-American Convention Against All Forms of Discrimination and Intolerance.

Ombudsperson

- Reestablish regular meetings of the Permanent Roundtable on Human Rights of the LGBTI population and publish meeting schedules and minutes.
- Push for systematic data collection of victims' sexual orientation and gender identity at all relevant government agencies.

INTERNATIONAL ACTORS

The United States Ambassador to El Salvador

- Increase engagement with LGBT civil society organizations by attending events and meetings convened by civil society.
- Make public statements in support of LGBT rights highlighting the positive contributions of the LGBT community to society.

The U.S. Department of State

- In its next periodic review of El Salvador under the Alliance for Prosperity program, the Department of State should take appropriate steps to ensure that the government of El Salvador is abiding by the required human rights conditions to which 50% of funding is tied, including the requirement to “investigate and prosecute in the civilian justice system members of military and police forces who are credibly alleged to have violated human rights, and ensure that the military and police are cooperating in such cases.”⁴²⁰
- Publish benchmarks used to assess El Salvador’s progress in holding human rights violators accountable.
- Add LGBT-specific benchmarks for funding tied to compliance with human rights norms.

Organization of American States

- Continue to engage with the government of El Salvador and utilize the findings of this report to address the needs of LGBT people by calling on the State to combat hate crimes and impunity.

Inter-American Commission on Human Rights

- Follow-up on the implementation by El Salvador of the recommendations included in the IACHR’s Report on Violence against LGBTI People in the Americas, adopted in 2015.
- Follow-up with the government of El Salvador regarding measures to comply with its obligations to respect and safeguard the human rights of LGBT people in El Salvador, including with respect to the information presented by human rights organizations during the March 2017 hearing held before the IACHR.

⁴²⁰ CONSOLIDATED APPROPRIATIONS ACT, 2016, PL 114-113, December 18, 2015, 129 Stat 2242, available at <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.