



Report for the Audience before the Inter-American Commission on Human Rights about the situation of violence against the population of transwomen in El Salvador

Washington D.C., 29th October 2013

Table of contents

- I. Introduction.....3

- II. Situation of violence against trans women in El Salvador.....5
 - 1. The exclusion and discrimination of trans women in El Salvador.....5
 - a. Exclusion and discrimination in an educational environment.....7
 - b. Exclusion and discrimination in a work environment.....8
 - 2. Negation of the right to a personal identity and the right to a name.....9

- III. Expressions of violence against the transgender population.....11
 - 1. Attacks against their way of life and personal safety.....
 - 2. Arbitrary arrests.....
 - 3. Torture, punishment and cruel, inhumane or degrading treatment.....

- IV. Lack of access to justice and impunity.....
 - 1. Discriminatory treatment in the judicial system.....
 - 2. Impunity.....
 - 3. Deficiency of legal and institutional framework.....

- V. Conclusions.....

- VI. Request.....

I. Introduction

In El Salvador the violations of human rights based on sexual orientation, identity and gender expression constitute a widespread and deep rooted pattern that subjects the LGBTI population to torture, ill-treatment, aggression, sexual assault, hate crimes (murders); the denial of access to employment and education, a limited access to justice, infringement of privacy, arbitrary arrests and exclusion from the enjoyment of other rights.

These patterns of violence are amplified by the situation of widespread violence that currently characterises El Salvador which includes problems with gangs, drug trafficking, human trafficking and other serious issues associated with security.

In the setting of a thematic hearing before the Illustrious Inter-American Commission on Human Rights (henceforth the CIDH or the Illustrious Commission), the petitioning organisation (COMCAVIS TRANS) and partner organisations will address the situation of violence that transwomen face based upon current information and our experience in the promotion and defence of the rights of the LGBTI population.

The point of departure for the audiences request before the Illustrious Commission has been the murder of our colleague and friend Tania Vásquez. Defender and activist of the rights of the LGBTI population in El Salvador, member of the board of directors of COMCAVIS TRANS and coordinator of the Vida Digna project; who on the 4th May 2013 was victim of a hate crime motivated by transphobia which forms part of the long list of murders perpetrated against transwomen that have been left in complicit silence and impunity by the State and it's institutions.

Although we won't refer specifically to the case of Tania Vásquez, we will seek to show evidence for the situation of violence that exists as a consequence of the transphobia and impunity in cases where the rights of transwomen in El Salvador have been violated.

In this report we will begin to outline the situation of exclusion, violence and discrimination that transwomen live with in El Salvador through information generated from the Procurator for the Protection of Human Rights (henceforth the PDDH) and the United Nations Development Programme (UNDP) raising some specific issues regarding access to education and exercise of the right to work.

We will therefore address the issue of the recognition of the right to a transsexual identity which has been denied to transwomen, which impacts the hate violence and all the other forms of transphobia they face.

Following this we will present data about the situation of violence that transwomen suffer – including the transwomen deprived of freedom – such as physical attacks, cruel and inhumane treatment, sexual violence and arbitrary arrests. Acts of physical, psychological and emotional violence will be detailed all of which is largely determined by the widespread transphobia and discrimination that exists against transwomen.

Finally, we will display evidence about the situation of impunity in cases where the human rights and basic freedom of the transsexual population is violated and how the Salvadorian State has breached their obligation to investigate, sanction and compensate these violations of human rights in their jurisdiction.

II. Situation of violence against the transsexual population in El Salvador

1. The exclusion and discrimination of transwomen in El Salvador

One of the main causes that generate violence against transwomen is the situation of exclusion and marginalisation expressed in the lack of recognition of their identity and an unequal treatment regarding their rights.

The American Convention on Human Rights -ACHR¹ - established in their first article that State parties respect and guarantee the rights and freedoms recognised in the convention, the same article prohibits all forms of discrimination of religion, race, sex (...) or “*any other social condition*”² the same obligation is established in the second article of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In the interpretation of the first article of the American Convention on Human Rights, the Inter-American Court of Human Rights declared that the text includes the prohibition of discrimination of sexual orientation, “*any other social condition*” and gender identity in which category the LGBTBI community are understood to be and protected within.³ The second section of this first article declares that *person* is understood as “every human being” that all persons subject to the jurisdiction of the State should enjoy the rights and freedom that the Convention contains. In light of the aforementioned provisions it’s necessary that State parties respect, protect and guarantee all of the rights contained within the ACHR in favour of members of the gay, lesbian, transsexual, bisexual and intersexual community that are subject to their jurisdiction with no discrimination whatsoever.

Social exclusion and lack of legal protection are serious problems in El Salvador. A study carried out in 2011 – on the general population⁴- measured the attitudes towards key populations in response to HIV – which includes transwomen- with the following results:

- Regarding the statement “Trans/Transvestite people have the right to have identity papers that identify them as women” 49.2% of people said they

¹ El Salvador ratified the American Convention on Human Rights on the 20th June 1978.

² Article 1.2 American Convention on Human Rights.

³ IHR Court. Atala Riffo Case and Girls Vs. Chile. Merits, Reparations and Costs. Sentence 24th February 2012. Series C No. 239, paragraphs 84, 85 and 91.

⁴ Program to strengthen the Central American response to HIV (PASCA). Stigma and discrimination in relation to HIV and AIDS in El Salvador, San Salvador, 2011.

strongly disagree and 23.2% disagreed, making a total of 72.4% of responses unfavourable.⁵

- In response to the question “people have the right to attack Trans/transvestite people for the way they are” 50.7% of people reported to strongly agree and 34.4% in agreement, making the total of unfavourable responses 85%⁶.

Furthermore, discrimination based on transsexual gender identity doesn't possess legal framework that adequately protects it. Although it is acknowledged that transsexual men and women are equal by law, it isn't embodied in the Constitution of the Republic, neither is it specifically mentioned in the rest of the national legislation.⁷

All of this presupposes an unfavourable impact upon the Trans population. The rule of law dictates that the actions of the State must be legitimised and predicted by the law – as the law is the only mechanism that attributes power to public administration-. Therefore, if laws or protection for transwomen don't exist this generates a high level of legal insecurity, exclusion and lack of protection on the State's part.

A report on the rights of transwomen, carried out in 2013 by the PDDH and UNDP⁸, revealed that State institutions have discriminated, harassed and abused transwomen because of their identity and gender expression. The institutions indicated most often were the security forces: National Civilian Police, Metropolitan Agents and the Armed Forces. The report also states that discrimination comes from other public institutions such as the Duicentros (Centres for the issuing of National Identity Cards, henceforth the DUI), the Ministry of Health and the Ministry of Education.

Transphobia and incitement to hate have also been encouraged by the media. In “the Hemerographic Study on the LGBTI Population of El Salvador”⁹ – from 1st January 2004 to 31st May 2012- it was concluded that news published by “La Presa Gráfica”and “El Diario de Hoy”¹⁰ reinforce discrimination (31%) and stereotypes

⁵ Ibid. p. 40.

⁶ Ibid. p. 38.

⁷ Centre of International Studies. Association for the Communication and Teaching Transwomen with HIV and Aids in El Salvador (COMCAVIS Trans: Asociación Comunicando y Capacitando a Mujeres Trans con VIH y Sida en El Salvador). Judicial Diagnostic on the Human Rights of the LGBTI Population in El Salvador. 1st Edition. Managua, Nicaragua, June 2012.

⁸ Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP). Report on the situation of Human Rights of the LGBTI Population in El Salvador, San Salvador, 2013.

⁹ Centre of International Studies and COMCAVIS TRANS. Hemerographic Study on the LGBTI Population of El Salvadorj, First Edition. San Salvador, 2012.

¹⁰ Mainstream Salvadorian newspapers.

(15%).¹¹ Reportage on hate crimes occupy a low percentage of findings, which warns of the invisibility of the problem. Also – upon revising meticulously the Hemerographic Study – it can be observed that the murder of transwomen have a “sensationalist” focus where it is suggested that these transwomen in fact provoke their own murders. These news stories often catalogue the murders of Trans women as a result of general violence and not as crimes derived from transphobia despite the unquestionable cruelty that they are committed with.

This, in conjunction with the absence of protection from the Salvadorian legal system, results in the violation of the right to equality. Without this discrimination from the authorities, transwomen would be in a position to be recognised in general society as well as in educational and working environments, among others.

a. Exclusion and discrimination in an educational environment

Article 53 of the Constitution of the Republic of El Salvador states the right to education, and recognises that this right is inherent to all human beings. The General Education Act defines education as an ongoing personal, cultural and social training process, founded upon the principle of a person’s dignity, rights and obligations. National education must instil respect for human rights, observance of obligations and combat all forms of intolerance and hatred. On this subject– the right to education – the PDDH and UNDP report states that:

Although a relatively high percentage of transwomen have Access to formal education, the proportion who complete secondary education (bachillerato) is 36%, and only 4% go on to further, technical or university, education. It should also be noted that 48% claim to have suffered discrimination. exclusion, violence, bullying and harassment from teachers or other school staff as a result of their identity and gender expression (in both the public and private sectors). All of this indicates that the conditions allowing transwomen to be educated are in place. However, it seems that the gender transition process they are going through, with its major and minor aesthetic and physical changes, brings about bullying and exclusion for these women, which ultimately contributes to their decision to abandon education.¹²

Such transphobia and exclusion, experienced by transwomen in educational establishments comes from various sources, such as teachers, supervisors and students. In many cases, it takes the form of sexual harassment and attempted rape, as well as denial of their right to enrol to continue their studies.¹³ Examples of discrimination are not only physical, and are known to include mockery, insults, humiliation, assault and unjustified punishment. Furthermore, various forms of pressure are used to force transwomen to switch their means of education (from on-site to distance learning), in addition to many other forms of bullying.¹⁴

12. Office of the Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP) Op.Cit, p.21

¹¹ Ibid. p. 23.

13. Ibid, p.22

14. "Such as not answering their academic questions; refusing them access to cultural and leisure activities; threatening them with expulsion if their parents do not correct their "abnormal conduct"; inciting other students to attack them; and stigmatising them as HIV carriers." Cfr.Ibid, p.22. See also: Centre of International Studies. COMCAVIS TRANS. Opinion poll on Human Rights of the LGBTI population of El Salvador, February 2013.

With regards education provided as an, "alternative to formal education", such as distance learning, PDDH concluded that in many cases, transwomen were required to change their gender expression in order to be granted academic accreditations such as records of attendance and certificates. This translates into abandonment of studies and disruption of academic careers.¹⁵

One transwoman states that "I was studying a distance learning programme at secondary school and when we finished the year they demanded that we cut our hair, let our moustaches grow and wear a suit and tie, or else they wouldn't give us our diploma...That's why we didn't graduate from the Bachillerato." "There's access to education, but there are many obstacles which stop us from going forward."¹⁶

The PDDH has also discovered that "there is also discrimination in higher education, preventing transwomen from accessing, following and completing university or technical studies."¹⁷

Given these factors, it is clear that the exclusion and discrimination which transwomen face in the educational environment prevents them from accessing their right to education without difficulty.

b. Exclusion and discrimination in a work environment

According to data on occupations gathered by PDDH and PNUD, 85% of transwomen have carried out sex work in order to survive, and 45.2% have a monthly income of under \$180.¹⁸ What's more, 18% state that they are unemployed.¹⁹ The same report claims that the public and private institutions place obstacles in the way of transwomen in terms of finding and keeping a job, due to disapproval of their gender expression, which is noticeable to the trans community itself.²⁰

The report cited mentions transwomen who have completed university degrees, but are unable to access their chosen profession due to obstacles in the workplace which prevent them from expressing their gender identity, despite having achieved

15. Office of the Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP) Op.Cit, p.22

16. Ibidem, p.23

17. Ibidem, p.43

18. Ibidem, p. 20 Citing: Ministry of Health, PASMO CDC. (Central American Survey on Sexual Behaviour and the Prevalence of HIV and STIs in vulnerable communities (ECVC). San Salvador, 2010.

19. Office of the Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP) Op.Cit, p.20

20. Ibid

high marks in workplace admission tests.²¹

Furthermore, there is evidence of abuse after they have been hired, including salaries lower than the minimum wage, longer working hours than are legally permitted, and being assigned difficult or unpleasant tasks, as well as being required to adopt a masculine gender identity.²²

The PDDH and PNUD report states that:

Civil servants suggest that these unstable working conditions result, in part, from exclusion and lack of protection from the State. This is because trans gender identity is not legally recognised, and although the Labour Code states that all people have the right to dignified and productive work in equal and acceptable working conditions, and to protection against unemployment, there is no formal basis for inclusion, as trans people are not mentioned in the Code.²³

In conclusion, the lack of visibility, exclusion and discrimination experienced by transwomen goes beyond the educational setting and into the workplace. Even if they have received the academic training required to carry out a job, the lack of acceptance of their identity and transsexual gender expression, as well as the transphobia they face, have repercussions on their working conditions. Furthermore, the lack of protection mechanisms in the workplace increases impunity and exacerbates the vulnerable situation in which they find themselves. Given the absence of legal protection, the lack of job opportunities, discriminatory practices and the corporate and institutional barriers in access to employment, the majority of transwomen resort to sex work. Whilst this provides them with a means of survival, it exacerbates their social exclusion and subjects them to unsafe and adverse conditions, presenting a high risk to their safety and even their lives.²⁴

2. Negation of the right to a personal identity and the right to a name

The PDDH and PNUD report states that “89% of women who define themselves as trans are identified by a feminine name, which demonstrates that for the majority of these women, there is consistency between the components of their identity.”²⁵

In terms of the right to identity, 42% of trans women have had problems when using their national ID card or another legal identification document, which has negative

21. Ibid.

22. Ibid.

23. Ibid

24. Ibidem, p.43.

25. "The remaining 10% identify themselves with masculine names, which is assumed to be the result of cultural factors which stereotype transwomen (as faggots, homosexuals, men dressed as women, etc.). As a result, due to lack of knowledge of their rights, these women adapt to these stereotypes. Paradoxically, they identify themselves as women, but respond to a masculine name". Ibidem, p.17 repercussions on day-to-day tasks such as applying for a loan, paying credit card bills, and using a passport, as well as others.²⁶

Furthermore, almost 70% of transwomen experience difficulties when processing state-issued identification documents, and 44.8% have had problems when applying for a national ID card. It must be noted that 80% of transwomen state that they use their masculine name for legal purposes, and that they wish to change this.²⁷

In terms of the current legislation, neither the National Register of Natural Persons (RNPN), nor the Law on the Name of Natural Persons has a mechanism for recognising transsexual identity. Although the Law on Names establishes, "the right to change the given name, wherever it may be misleading with regards sex,"²⁸ this has not been applied, and does not include the case of trans people.

Accordingly, the National Register of Natural Persons (RNPN) must apply the relevant legislation to regulate adjustments to the civil identity of transwomen,²⁹ as the procedure for changing their own sex and name in identification documents must be accessible to these individuals, allowing them to live as their chosen gender. It is illogical to deny someone the freedom to choose a feminine name, when, from a psychological, social, cultural and in many cases biological point of view, this person feels that they belong to said sex or gender. Such a refusal is an open infringement of her right to personal identity; a restriction which, ultimately, damages her development, as it prevents her from expressing her full potential within society "as a woman" and prevents her from achieving her life goals.³⁰

As such, the PDDH itself concludes that:

Although these rights are recognised and ratified in El Salvador, change of name- as a demonstration of the right to personal identity- is not possible for transwomen, principally as a result of moral and religious prejudice. Accordingly, given the undeniable and essential correlation which exists between human dignity and all fundamental rights, it is the responsibility of the Salvadorian State to accept a specific case within the right to identity and name, this being understood as an essential aspect of the free, full and complete development of the life goals of any person, which does not endanger the legal rights of any third party or of the public but, on the contrary, ensures the rights of the population.³¹

26. Ibidem

27. Ibidem

28. Natural Persons Act. Article 23.

29. 15. Office of the Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP) Op.Cit, p.22

30. Thematic report by Thomaas Hammarberg, Council of Europe Commissioner for Human Rights. Human Rights and Gender Identity. Volume 1. Available at

http://www.transrespecttransphobia.org/uploads/downloads/Publications/Hberg_es.pdf , p. 12.

31. PDDH and PNUD. Op. Cit., p. 42.

III. Expressions of violence against the transgender population

1. Attacks against their way of life and personal safety

On a global scale, El Salvador is ranked as the second most violent country in the world, with 69.2 violent deaths recorded per 100,000 inhabitants.³² El Salvador is also one of the countries with the highest rate of female murders.³³ Domestic violence has been identified as the principal cause of death for Salvadorian women between the ages of fifteen and forty four.

Against this backdrop of violence and impunity, the LGBTI community is vulnerable to abuse and attacks against its way of life and integrity, most often against transwomen.

In the report produced by PDDH and PNUD, it is stated that 52.5% of transwomen have received threats of death or violence, mainly due to transphobia and extortion (or fees) imposed by gangs controlling sex work.³⁴

This study also reveals that:

45.8% of transwomen have suffered attacks against their way of life or physical integrity, which have taken place within the community, on the street, in public places (such as markets, parks, bus stations), prisons, cells etc. These attacks have resulted in a wide range of different wounds, and the majority are carried out by strangers. Some individuals remanded in custody in cells belonging to delegations of the National Civil Police (PNC) state that they have been beaten or wounded for refusing to have sexual relations (with detainees, prisoners and guards). They also state that the weapons most commonly used in these attacks or attempted murders are bladed weapons (such as knives), firearms, blunt objects (such as stones and sticks), and other objects such as ropes and hands (used in hangings) and fists and feet (as in physical beatings), as well as the use of substances such as pepper spray.³⁵

Some statements made by transwomen to the PDDH regarding violations to their safety and physical integrity.³⁶

“Normal citizens are protected, but trans women are not.”

31. PDDH and PNUD. Op. Cit., p. 42.

32. United Nations Office for Drug Control and Crime Prevention. Murder statistics 2013. Available online at: <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>

33. Small Arms Survey. Report: "Femicide: a global problem, Geneva, Switzerland, 2012

34. Office of the Procurator for the Defence of Human Rights and United Nations Development Programme (UNDP) Op.Cit, p.31.

35: Ibid.

36. Ibidem, p. 32 and 33.

□ "There's too much violence aimed at us, the same authorities who discriminate against us abuse us sexually."

□ "When we file complaints, they look at us like we're crazy. The attackers go unpunished."

□ "Many transwomen who have been murdered just for being transgender, because of society's hatred of us. Not long ago, some of my friends got taken away by clients and came back dead, tortured and raped, but the authorities do nothing. They say good, one less. Trans people are more vulnerable."

□ "...we pay a regular weekly fee which is non-negotiable as they- the gangsters- say, "your life is not negotiable". We tell this to the authorities and they say we have no proof" "The police pass by and I say, "look, officer, there they are, collecting their fees, stop them, search them, they'll be tattooed, with money, with guns." They act as if they're going to follow them, but in the end they don't..."

□ "It's awful where we live, even going to the supermarket is awful. There, they shout at us, they attack us, beat us up..." "They attack us again, they hurl insults".. "We're so badly discriminated against that we reach a point where we think we don't have any problems." "...the trauma they cause with so many verbal assaults makes you feel insecure...". "...we are the face of sexual diversity, because of our identity we have to receive more discrimination."

According to a diagnosis on the health of transwomen, carried out by the AIDSTAR-One project:

The vast majority of transwomen tell of at least one occasion in their lifetime at which they have been victims of extreme violence. The most frequent case is rape, both inside and outside of the family circle, which includes partners and ex partners. In some instances the sexual abuse took place at an early age, but it is more common from adolescence onwards, in situations where they found themselves unprotected, this being especially common during sex work, when changing location, or simply when walking alone in public places.³⁷

After sexual abuse, verbal abuse on the part of relatives, neighbours and acquaintances is the most common problem, followed by physical violence, including the use of bladed weapons and firearms. The following phrase illustrates these violent experiences, "A client took me away and attempted to kill me. I lost one of the fingers of my right hand that day."³⁸

37. USAID/AIDSTAR-One. Diagnosis of healthcare needs and services available for transwomen in El Salvador. San Salvador, 2013, p. 33.

38. Ibidem, p.27.

Of these attacks against the integrity of the trans population, the situation is particularly grave in terms of murder, which often involves kidnap and torture. Despite the lack of a break-down of official murder statistics relating to this specific group, improvements in the identification, recording and organisation of data by LGBTI organisations have made it easier to visualise these murder statistics, as well as demonstrating the increase of such cases in the last ten years.

The biggest increase in hate crimes was seen in the so called “Bloody June”, during which the murder rate increased by over 400% compared to 2003.³⁹ In June 2009, El Salvador experienced an unprecedented wave of violence against the LGBTI community. On June 9th, Tania and Katerina, two transgendered women who were sex workers in San Salvador, were kidnapped. The following morning, Katarina’s corpse was discovered face down in a muddy ditch; she had been beaten and strangled. Tania was still missing. When Tania’s friends called her mobile phone, an unknown voice threatened, “she’s going to die, it’s what she deserves”. Seven days later, her body was found. It was partially dismembered. She was an adolescent aged 17. Another example is Rianna, who, in February 2011, suffered a gang rape and was killed. However, there was no mention of her murder in the Salvadorian press, and no one was found guilty for her death.⁴⁰

39. The document, "Systemisation of Acts of violence against gay, lesbian, bisexual and trans communities in El Salvador, produced by the Alliance for LGBT Sexual Diversity, records the most significant incidents to have occurred in 2009.

40. Legal Clinic for International Human Rights of the University of California, Berkeley, Faculty of Law. Sexual Diversity in El Salvador. A report on the human rights situation of the LGBT population, July 2012, p.16.

. In 2008, Asociación Entre Amigos (Among Friends Association) reported the murders of eleven LGBT individuals, twenty three in 2009 and ten in 2010. In many cases the bodies of the victims showed signs of torture, including dismemberment, stab wounds, beatings and multiple gunshot wounds⁴¹.

In 2012 and 2013, 32 complaints of police abuse were filed with the PDDH, perpetrated particularly towards trans women. In the same year more than 14 murders were committed and during 2013 alone, up to 14th October, there were 8 deaths within the community of trans and gay women (including the death of Tania Vásquez).⁴²

It can be assured that the violation of the right to life and personal security of trans women is rooted in an absence of protection frameworks, social transphobia and because criminal acts perpetrated against these women are not resolved by the judicial authorities. This generates a situation of impunity that encourages repetition of the violations. In the same way, incitement to hate and messages of transphobia without any form of legal repercussion leaves this population without any protection and therefore in a serious situation of vulnerability.

2. Arbitrary Detentions

As is clear from the report published by PDDH and UNDP, arbitrary detentions of trans women in El Salvador are frequent, especially of those who engage in sex work. This occurs because those who are charged with enforcing the law link sex work with the transsexual identity⁴⁴.

These detentions, as the trans women explain, are based on unclear allegations and charges. Furthermore, some statements from trans women who were detained or arrested indicated that, at the moment of their arrest, they were not informed of the reason for their detainment nor the nature of the charges against them. The following are some examples of such statements⁴⁵:

- *"...they took me to the municipal police just because they saw me standing on a corner and I wasn't even prostituting myself. They hit me, handcuffed me and put me in with the 'marosos' (gang members). Afterwards we made a complaint and they did nothing."*
- *"...they put you in the police car with heels and handcuffs. When we arrived at the police station they threw me down flat on the floor... and how was I arrested?...and he told me to get up and kicked me..."*

3. Torture and Cruel, Inhuman or Degrading Treatment or Punishment

According to the report published by PDDH and UNDP, 'a third of trans women have experienced torture and cruel, humiliating, inhuman or degrading treatment on account of being a trans woman'⁴⁶. Despite many trans women being unfamiliar with the concept of torture, "they say they are accustomed to the humiliation"⁴⁷.

41 *Ibidem*, p. 16.

42 Sistematización de Asociación Solidaria para Impulsar el Desarrollo Humano (ASPIDH Arcoíris Trans)/RED LACTRANS. El Salvador, 2013.

43 Procuraduría para la Defensa de los Derechos Humanos and United Nations Development Program (UNDP). *Op. Cit.*, p. 44.

44 Id.

45 *Ibidem*, p. 53.

46 *Ibidem*, p. 36.

They consider being insulted as a 'normal' part of the routine since they expressed their sexual identity and do not see it as a violation of a right. Instead they consider that, in some way, this everyday life has given them a certain resilience (or strength). Furthermore, a third of trans women signalled that at least on one occasion, an officer of the state has incited others to mistreat or humiliate them⁴⁸.

In the context of deprivation of liberty, it is known that trans women are subjected to sexual violence without the use of condoms. In some cases their aggressors are others who are also deprived of liberty acting with the consent of their guards. The acts to which they are subjected include rape, physical violence and ill-treatment on the part of the guards; such as death threats and serious physical and emotional abuse by other inmates⁴⁹.

Although negotiations are underway to improve the situation of trans women in prisons, there are still many challenges to be overcome. A particular challenge is that of the heterogeneity of measures taken, as protection is not homogenised through general measures to favour trans women. "For example, it is indicated that no trans women prisoners exercise their right to conjugal visits like other prisoners. This is because they are considered men, both legally and biologically, and are therefore denied this right."⁵⁰

Furthermore, it is clear that the Prisons Act offers no legal protection, which, coupled with the abusive practices of the police force, results in a complete lack of protection for trans women. This in turn leads to greater marginalisation and exposure to vulnerability. A number of testimonies are shown below⁵¹.

- *".... A female soldier hit her (a trans woman) and she started to cry, and the female soldier asked her why she is crying, she said that she was a man and asked her why she had marijuana and wore women's trousers"*.
- *"They striped me naked, and as I didn't know my rights I could not defend myself. It was on a public street"*.
- *"I didn't let them strip me and I was reluctant until they hit me, but not ..."*

47 Id.

48 Id.

49 Id.

50 Id.

51 *Ibidem*, p. 38.

IV Impunity and Lack of Access to Justice

The American Convention on Human Rights includes the duty to investigate along with access to justice as fundamental rights that the state must guarantee and respect.

As a part of the duty to guarantee the fundamental rights contained within the American Convention on Human Rights, the Honourable Inter-American Court of Human Rights established the criterion in the *Velásquez Rodríguez vs Honduras* ruling in which it established:

This obligation implies the duty of the member states to organise all governmental apparatus and, in general, all structures through which public power is exercised, in such a way as to enable them to lawfully ensure the free and full exercise of human rights. As a consequence of this obligation, the states must prevent, investigate and sanction all violations of the rights recognised by the Convention and procure, in addition, the reestablishment, if possible, of the violated right and, where appropriate, the redress of damages produced by the violation of human rights⁵².

Situations of serious violence and violations of the right to personal integrity and, on occasions, to life suffered by the trans community warrant activation of state apparatus to carry out investigations and assign criminal responsibility in the interest of guaranteeing the rights of these individuals. In this same way, the Salvadoran state is not only obligated to prevent violations of the rights of trans women, but also to redress these violations should they occur. However, trans women face various obstacles to accessing justice.

The nonexistence of protection mechanisms, such as monitoring of cases of violations to integrity or life of trans women, results in the immersion of cases in a state of total impunity, which in turn encourages repetition of similar incidents.

On the other hand, a situation of generalised impunity is exhibited with regard to the prosecution of cases of violence against the trans community. The Inter-American Court of Human Rights mentions:

This active protection of the right to life on the part on the state not only involves its legislators but also all state institutions and those who must safeguard security, either its police forces or its armed forces. In view of the above, the states must adopt the necessary measures, not only at the legislative, administrative and judicial levels, through the issuing of criminal laws and the establishment of a justice system to prevent, eliminate and punish the deprivation of life as a consequence of criminal acts, but also to prevent and protect individuals from the criminal acts of others and effectively investigate these situations⁵³.

1. Discriminatory Treatment within the Legal System

The report by PDDH and UNDP indicates that many trans women confirm that they have received discriminatory treatment, motivated by their gender identity, during the stages of both civil and criminal legal proceedings. Also, that on many occasions their credibility as a party or as a witness is questioned on the basis of their gender identity.

52 Inter-American Court of Human Rights. *Velásquez Rodríguez V. Honduras*. Merits. Judgement of 29th July 1988. Ser. C No. 4, Para. 166.

53 Inter-American Court of Human Rights. *Vargas Areco V. Paraguay*. Merits, Reparations and Costs. Judgement of 26 September 2006. Ser. C No. 155, Para. 75.

The situation is complex since the Criminal Code does not establish prohibition of treatment motivated completely or partially by the transsexual gender identity. The situation is further aggravated by judges, prosecutors and the personal justice administrator who are unclear about the existing international laws.

Furthermore, there are many occasions of violations of due process and the rights which protect defendants.

The following is a declaration from a trans woman:

“... when we arrive at the prison cages they put us in with the men. One man said to me that at night they are going to do everything to us and that if we screamed they were going to kill us. They hit my friend Kimberly”. “It’s that they always put us in with the gang members”.

The same report stated that:

21% of trans women (N=100) reported that, during their lifetime, they had been subjected to legal proceedings that led to some form of penalty and a quarter of these women indicated that the procedures required during arrest and prosecution were ineffective. The perception that trans women have about the civil and criminal proceedings is that, because of their gender identity, judges lose all credibility in them⁵⁴.

The following are declarations from two women⁵⁵:

- “When we ask for justice they don’t give it to us, but when we are the perpetrators they immediately throw us in jail”.
- “A female judge acknowledged a serious assault on a trans woman, but instead of sanctioning the perpetrator, she offered the opportunity to reconcile. When another trans woman was the perpetrator – for a similar assault – she didn’t provide an opportunity for reconciliation”.

Among the findings of this report, the implication that half of officials believe that the proceedings can be completely or partially affected by prejudice based on gender identity is also highlighted. The FGR explains “in principle we assume we do not prejudge the processes. We promote the prosecutors role on a non-discriminatory basis”⁵⁶.

All these approaches are very difficult to investigate, verify and generalise, but it highlights a further problem: the absence of provisions that assure the prevention and protection of individuals against this form of discrimination, during both civil and criminal legal proceedings⁵⁷.

A clear example of how access to justice is obstructed for trans women, was the situation experienced by the COMCAVIS TRANS organisation as a result of the murder of Tania Vásquez. When the case was reported and an investigation requested, the judicial authorities directed the enquiry against the organisation, executing a search warrant on the headquarters of COMCAVIS Trans. In addition to searching the offices, they took the computers and hard disks, criminalising the work and indicating that the organisation operates as a centre for sex

work for women and transsexuals whilst ignoring the work carried out by COMCAVIS TRANS in the defence of human rights.

43 Procuraduría para la Defensa de los Derechos Humanos and United Nations Development Program (UNDP). *Op. Cit.*, p. 35.

55 *Ibidem*, pp. 36. Paragraph 1 and 2

56 *Id.*

57 *Ibidem*, p. 44.

As can be seen, instead of resolving the case, justice operators made COMCAVIS TRANS the target of the criminal investigation. This type of action has been condemned by the Illustrious Commission in its Second Report on the Situation of Human Rights Defenders in the Americas.

2. Impunity

The decision of victims not to report a crime is the first problem related to impunity. Thus the PDDH and UNDP report explains that, of the trans women who indicated that they had been the victims of discrimination, violence and harassment, only 10.1% filed a complaint and of these, only a third indicated that the incidents were investigated. Finally only 4.5% of cases were sanctioned at the conclusion of the process⁵⁸.

According to the same report, only 23.9% of trans women that suffered an assault filed a complaint, since they say they have no interest in doing so. The reasons behind this decision are firstly because of fear of reprisals from their aggressors and secondly because of the limited credibility that they possess in the legal system, since they assure that a complaint is ignored, discriminated against and the subject of ridicule. The institutions where complaints about assault are mainly filed are the PDDH, the Attorney General of the Republic (FGR), the PNC and the Directorate of Prisons (when the incidents occur in these precincts). Of the group of trans women who filed a complaint, only a third said that these incidents were investigated and only one of these indicated that the aggressor was sanctioned⁵⁹.

Additionally, 87% of trans women indicated that they knew of at least one case of a trans women who had been murdered and that, as far as they know, no case had been solved⁶⁰.

In regards to the perception or knowledge in respect to the reports made by trans women when they are victims of violent incidents, a third of officials (interviewed as part of the study), consider that the relevant procedures established by law were not performed when dealing with these allegations⁶¹.

The FGR explains that the investigations are opened, but sometimes there are difficulties in the process with family members and witnesses that are afraid to cooperate. For this reason cases either do not arrive or are delayed arriving at the courts⁶².

3. Insufficient Legal and Institutional Framework

There have been some advances in terms of the regulation and institutional level in El Salvador in recent years. One of these advances was the drafting and approval (from 2010) of the Executive Decree No. 56 "*Provisions to avoid discrimination on the basis of gender identity and/or sexual orientation*" that aims to facilitate conditions of equality before the law and protect the LGBTI communities from discrimination in public institutions.

However, difficulties have been observed in the implementation of the Decree as it is limited to those institutions under the Executive Body and excludes all other state bodies and Institutions, and local governments (municipal mayor's office). Furthermore it does not possess regulations or clear procedures and nor does it pose sanctions in the case of non-compliance. They are still

to develop mechanisms for the full application of the rules of procedure (such as the correction of the policies, plans, programs and projects that constitute or can generate discrimination against LGBTI), and have not even obtained the mobilization of political support and resources necessary for its application.

58 Ibidem, p. 28.

59 Ibidem, p. 31.

60 Ibidem, p. 32.

61 Ibidem, p. 33.

62 Id.

In 2010, on the other hand, the Directorate for Sexual Diversity within the Secretariat of Social Inclusion was created, which is accountable to the President of the Republic and directed by the First Lady. The purpose of this body is to generate conditions that allow the social inclusion and protection of LGBTI individuals, the development of skills, citizen participation and the elimination of discrimination from a human rights perspective. Similarly, in 2012, the Permanent Bureau on Human Rights of the LGBTI community was formed, consisting of the PDDH, non-government organisations and independent activists from the LGBTI community. The purpose of this body is to carry out political advocacy actions in support of the LGBTI community, and, following its newly formulated strategic plan, the first actions are now in progress.

Moreover, the progressive interest of the Ministry of Health in the health situation of this community should be noted, with emphasis on the prevention and consideration of HIV and sexual health. This includes, among others, the creation of care protocols, staff training and the empowerment of specialised care services. In addition, the facilitation of the Ministry of Interior so that LGBTI organisations could obtain their legal status, which was denied for many years, and the opening of communication channels with the Prisons Directorate

However, these advances have been limited to the Executive Branch with a large section of the public institutions, particularly those responsible for security and justice, still to incorporate the care perspective to the trans population. This extends to the institutional level since capacity and conditions for combating violence against the trans community is lacking, starting with the limited awareness of the operators on the subject.

In this sense, the legal framework of protection for trans women is incomplete since the Salvadoran Criminal Code does not include the criminalisation of hate crimes against trans women and the LGBTI community not to mention if this variant of hate crime is wanted as an aggravating circumstance of the crime. This is despite emphasising human dignity, and the criminalisation and punishment of all types of crime in its principles.

Furthermore, it does not prohibit incitement to social hate based on gender identity promoted by conservative groups and political parties who, in the majority of cases, rally when issues such as same sex marriage appear in the press.

Conversely, no policies or measures exist for the National Civil Police, the Armed Forces of El Salvador and the Corps of Metropolitan Agents, which are designed to prevent violence and harassment motivated by gender identity and sexual orientation.

In September 2013, ASPIDH held a press conference to report and present the systemisation of 42 cases of deaths which have not been effectively and efficiently investigated by the authorities⁶³, requiring the collaboration of the Attorney General of the Republic. However, neither the Attorney General of the Republic nor the National Civil Police, have specific units nor areas to treat hate crimes. This has repercussions on the lack of knowledge and awareness of the authorities and justice agents that must take the reports, such as attorneys and police

officers that do not recognise the rights of the trans community. In other bodies, such as the Attorney General's Office, where individuals that require legal assistance can turn when they do not possess sufficient funds to cover the costs of private assistance, they receive similar treatment.

63 Asociación ASPIDH Arcoíris Trans. Report: "Monitoreo y números de casos de homicidios

One major problem occurs when institutions, which include citizen security among their mandates, are unaware of their duties and use security services to commit violations of people's rights. In this sense, through the actions of security officials, they have committed violations of physical and psychological integrity as well as of the right to life.

According to the report from the University of California, Berkeley, on the violence directed against the LGBT community, the most serious abuses on the part of the authorities are those directed towards transgender women:

...Those who are particularly vulnerable given their visibility and the high incidence of sex work. Advocates interviewed stated that a cycle of criminalization has developed whereby transgender identity and sex work are conflated. As a result, they explained that transgender individuals are targeted based on their sexual identity and perceived activities as sex workers. Abuses carried out against transgender individuals are then justified on this basis, and the associated stigma helps to ensure impunity for the perpetrators⁶⁴.

One transgender activist reflected: "It is not possible to generalise... This is what our police, our CAM agents do ...they all generalise because one person uses drugs, we all use drugs, because one has HIV, we all have HIV... because one is a thief, we are all thieves".⁶⁵

A further impediment to the effective administration of justice, as identified by activists, is lack of information. The representatives from the community groups report that often cases of violence against LGBT victims have been registered as 'crimes of passion' or 'attempted assault' rather than as hate crimes, even when the crimes in question clearly involve torture and brutality on the basis of animosity towards the LGBT identity of the victim. On the other hand, the lack of information and awareness of the rights and constitutional guarantees can lead to an absence of complaints which translates as impunity in such cases.

However, in cases when complaints have been presented, a tendency towards impunity exists through the nonexistence of special protection mechanisms for such cases and by the impunity that prevails over the rights violations of trans women.

Such is the case of a transgender activist who reported that she was detained by agents of the Corps of Metropolitan Agents, mistreated and locked in a chicken cage. The formal complaint that she lodged was not investigated and the officials involved were not sanctioned. In addition, the stories regarding the police response to complaints of crimes committed against LGBT individuals indicated that these crimes were not taken as seriously.

contra la comunidad Trans y Gay, San Salvador, 2013.

64 International Human Rights Law Clinic University of California, Berkeley, Faculty of Law. Sexual Diversity in El Salvador. A Report on the Human Rights Situation of the LGBT Community, July 2012, p. 18.

65 Ibidem, p. 18.

Several transgender women reported that when making an emergency call, the National Civil Police hung up on them, which they attribute to giving a woman's name but speaking with a masculine voice.⁶⁶

66 Ibidem, p. 21.

V. Conclusions

The Salvadoran State has not adequately fulfilled the obligations established by the American Convention on Human Rights in terms of non-discrimination, and in its duty of protection and effective legal protection of the LGBTI community, in particular of trans women. It is denoted that it has not adapted its internal regulations to comply with international parameters to allow the effective recognition of the right to an identity, such as mechanisms for changing a name, which translates as a violation of the life project and of the obligation of the state to respect and guarantee that people can develop freely.

The situation of exclusion, transphobia and incitement to hate towards trans women leads to a generalised situation of violence that ranges from psychological violence to physical violence, placing the personal integrity and life of these individuals at risk.

Violence against the community of trans women constitutes a systematic pattern of human rights violations motivated by the denial of the transsexual identity and hatred towards persons with transgender expression. This violence, expressed in hate crimes, constitutes a threat to the security of trans women that does not have the guarantees necessary to freely express their sexual identity, gender expression and sexuality.

The absence of legal mechanisms and public policies that incorporate the perspective of transversal protection for trans women in an integrated and definitive manner continues to represent an obstacle to the exercise of rights contained within the international instruments such as the American Convention of Human Rights. This will therefore contribute to the violation of the rights of this community on the part of the Salvadoran State.

Likewise, the lack of a judicial system that protects, investigates, sanctions and redresses the damage caused to the victims brings with it a situation of impunity. This encourages the repetition of such incidents and leaves the community of trans women with no protection against their aggressors.

Similarly, the discriminatory treatment given to trans women, and which is linked prejudicially with sex work, translates into criminalisation and harassment on the part of the authorities.

VI. Petition

In view of the information expressed above, we put forward to the Illustrious Inter-American Commission for Human Rights, the requirements in relation to the international obligations of the state of El Salvador.

Firstly, that it urges the Salvadoran state to drive forward the pertinent legislative reforms in order to adapt its judicial system to the international obligations that it has taken on, specifically:

- The adoption of an Identity and Gender Expression Law, in accordance with the Yogyakarta Principles.
- The criminalisation of hate crimes under the Salvadoran Criminal Code with consistent follow up measures, such as a unit in the Attorney General of the Republic. Also, the implementation of specialised protocols for the investigation of these crimes to ensure a transparent investigation that includes appropriate and complete access to information.
- The adequacy of the internal regulations to effect the creation of a Law against Discrimination based on Sexual Orientation, Expression and Gender Identity that rescues and strengthens the institutional and regulatory advances that have been made in El Salvador, contemplating the creation of an autonomous body that ensures the rights and freedoms of the LGBTI community.

Secondly, that it urges the state of El Salvador to establish a dialogue table with executive, judicial and legislative actors with the objective of developing a route map for the adoption of subsequent reforms on the following themes: to eradicate discriminatory practices and guarantee access to justice, an effective investigation and to redress for victims.

Lastly, we respectfully request that the Illustrious Commission include the information presented in this hearing in the report on the Situation of Human Rights of the LGBTI Population in the Americas, Also to periodically monitor the situation of violence against trans women in El Salvador, and to resume and express its concern in the official statement on concluding its sessions.



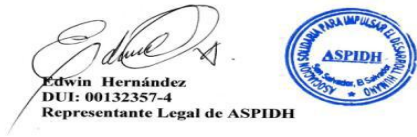
COMCAVIS Trans



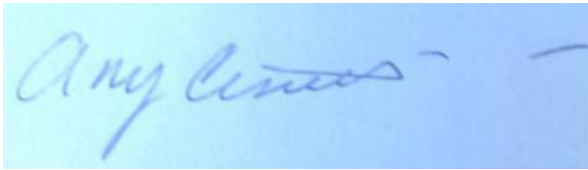
Nicole Santamaría

(Petitioning organisation)

Colectivo Alejandría



Modesto Mendizábal | ASTRANS



Ana Cisneros
Independent activist



Abraham Abrego
FESPAD



Valentina Ballesta
CEJIL

Translated from Spanish into English by Robyn Emily Darbyshire, Hannah Sullivan and Anna Callaghan within the initiative PerMondo. Sponsored by Mondo Agit offering translations from Spanish into English.