



Comisión Nacional de los
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MEXICO

SPECIAL REPORT BY THE NATIONAL HUMAN RIGHTS COMMISSION (CNDH) ON HOMOPHOBIA-RELATED HUMAN RIGHTS VIOLATIONS AND CRIMES

I. PRESENTATION

Based on article 102 part B of the National Constitution of the United Mexican States; articles 1, 3, 6 (paragraphs II, III, VII, VIII), 15 (paragraph VIII), and 71 of the Federal Law on the National Human Rights Commission; and article 174 of the Commission's internal code; the National Human Rights Commission (CNDH) presents to the public this special report on homophobia-related human rights violations and crimes.

The research work involved implied the compilation, systematization and processing of data related mainly to human rights violations and crimes committed against the lesbian, gay, bisexual, transvestite, transgender, and transsexual (LGBTTT) population. This data is comprised in 696 complaint cases processed by the CNDH, regional Human Rights Commissions, and the National Council for the Prevention of Discrimination; as well as investigations by various DA offices throughout Mexico, in which sexual orientation, identity, and/or gender expression, were determinant factors. This report covers the time between January 1, 1998, and December 31, 2008. Bibliographic and press/media reports related to sexuality, homophobia, and gender issues, were analyzed and consulted, as well as legislation, statistics, and opinion polls, among other sources.

The information obtained and processed allow for the conclusion that Mexico, today, suffers from discrimination against a sector of its population commonly identified as the LGBTTT community. If this problem is not addressed in a timely and effective fashion, the fundamental freedoms, integrity, and human rights protection of said community are at risk. This significantly hampers the construction of a law-abiding culture and the respect for human rights in Mexico.



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II. PRECEDENTS AND ENVIRONMENTAL FACTORS

The issue of Human Rights violations and crimes committed against the LGBTTT population in Mexico is of concern for the CNDH, more so since the amount of cases referred by different groups and NGO's indicate that Mexico occupies the 2nd place in Latin America in homophobic hate-crimes for the 1995-2006 period (with a total of 420 homophobic murders, according to the *Annual Report on Homophobic Hate Crimes*, published by Letra S Organization in 2006; 213 murders alone between 1995 and 2000, according to "Crime Report" published by the *Citizen Commission Against Homophobic Hate-Crimes* in 2000; and 628 murders between 1995 and 2008, according to the data in the *Homophobic Hate-Crime Report for Mexico, 1995-2008*, published in May, 2010). This is an alarming situation, if we take into account that, in the time between 1998 and 2008, in only 17 of Mexico's 32 state DA offices, a total of 162 homophobia-related murders were investigated.

Because of this, the National Human Rights Commission considers it necessary to adopt a stance regarding the grievances suffered by the GLBTTT population in the country. The rights of this community should not be wronged by local, state, and federal authorities. Moreover, these same authorities have a duty to promote, in society, these rights and the respect to the LGBTTT community, so that the legal and personal safeties of members of the LGBTTT community are preserved. Clear guidelines need to be established in order to stop discriminatory practices against this community.



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III. ACTIONS

Behind this report is a work program dedicated to gathering and analyzing materials on the state of homophobia-related human rights violations and crimes, as well as actions undertaken by the Mexican state to prevent and eradicate them, so that the rights of the LGBTTT population are preserved nationwide. The materials relevant to this report are twofold:

1. Requested Information. Data on investigations, whether ongoing or closed, regarding hate-crimes against members (confirmed or supposed) of the LGBTTT population, was requested from Mexico's 32 state DA offices. The National Council for the Prevention of Discrimination (CONAPRED) was asked to share information on the number of complaints and grievances related to discrimination because of sexual orientation and/or identity, as well as gender expression. All 32 state Human Rights Commissions disclosed data on LGBTTT related human rights violations in their respective states. Information was also obtained from various NGO's that work with the LGBTTT community, such as Colima's *Democracia y Sexualidad* (Democracy and Sexuality, DEMYSEX), the Gay Women's Group *Musas de Metal, A.C.*, and *Travestis de México* (TVMEX).

2. Other Information Sources and Documents. The CNDH also analyzed its own files on complaints of LGBTTT-related human rights violations processed in-house. Also, more than 15 studies dealing with gender issues, sexuality and homophobia were taken into consideration, such as: the *Citizen Commission Against Homophobic Hate-Crimes' "Crime Report"*; diverse studies on homophobia and hate-crimes published by *Letra S Organization; Salud, Sexualidad y SIDA, A.C.* ("Health, Sexuality, and AIDS"); *Cultura y Vida Cotidiana, A.C.* ("Everyday Culture and Life"); *Amnesty international's* 2001 report "Hate Crimes: A Conspiracy of



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Silence, Torture, and Abuse Based on Sexual Identity”; *Musas de Metal* Gay Women’s Group report “Gender and Sexual Orientation Discrimination Towards Lesbian and Bisexual Women”; *DEMYSEX Colima*’s report “I Give You My Eyes: Discrimination and Sexual Violence in Colima’s Rainbow Community”; and CONAPRED’s 2009 study “Analysis of Invisibility in Public Policy Regarding Lesbian Women in Mexico”.

Other sources were also consulted, such as the Pan American Health Organization’s 2006 study “Campaigns against Homophobia in Argentina, Brazil, Colombia, and Mexico”; the UN’s High Commissioner for Human Rights in Mexico’s 2004 report “The State of Human Rights in Mexico”; the Federal Government’s “National Program to Prevent and Eliminate Discrimination”, published on June 26, 2006 in the *Federation’s Official Diary*; as well as the Mexican President’s State of the Union addresses between 1998 and 2008.

It must be noted that the DA offices from the following states did not respond to the request for information made by the CNDH: Aguascalientes, Baja California Sur, Chihuahua, Colima, Durango, Hidalgo, Morelos, Nayarit, Nuevo León, Sonora, Tamaulipas, and Tlaxcala. The CNDH has made its best effort to learn the reasons for this refusal, without renouncing its discretionary legal authority to value an authority’s silence or inaction.

IV. FACTS AND OBSERVATIONS

According to the UN’s “The State of Human Rights in Mexico” report, the LGBTTT community in Mexico has increased its visibility, and it faces serious violations to its economic, social, cultural, civic, and political rights; intolerance is presented as



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a stigma. There exists local legislation that indirectly punishes homosexuality through constructs such as immoral behavior, public indecency, or obscene exposure. These laws allow for abusive behavior on the part of certain law-enforcement officers, a “custom” deeply rooted in local society and culture.

Also, CONAPRED’s 2006 “National Program to Prevent and Eliminate Discrimination” states that discrimination based on sexual orientation is becoming one of the most controversial issues on the international human rights agenda. According to a “National Survey on Civic Values and Democratic Culture in Mexico”, most people would not agree to live in the same house as a homosexual. The fear of losing friends, family, work, or abode, as well as the fear of exclusion, poverty, incarceration, or forced psychiatric therapy, keep most people of a non-heterosexual preference in silence, forced to live in a state of permanent simulation.

For its part, Amnesty International’s “Hate Crimes: A Conspiracy of Silence, Torture, and Abuse Based on Sexual Identity” deals with acts of violence against lesbians, gays, bisexuals, and transsexuals, both at home and on the street, indicating that, on occasions, they are persecuted and submitted to violent acts because they do not fit the gender norm, and that in almost every country in the world, their life is limited by a series of social practices that deny them equality, the right to life and physical integrity, as well as other fundamental rights, such as the right of assembly, freedom of speech, and the rights to work, privacy, education, and health care.

In this context, the National Human Rights Commission shares several opinions in the sense that discrimination based on gender expression, sexual orientation



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and/or identity, commonly known as “homophobia”, is a problem that deserves to be acknowledged officially, and that it is an issue to which special attention must be paid by national and local authorities in charge of promoting education, culture, respect for the law, and non-discrimination. The phenomenon of “stigma”, “prejudice”, “intolerance”, “contempt”, “aversion”, “rejection”, or whatever negative nomenclature one wishes to give it, puts people from the LGBTTT community in a position of vulnerability. This in turn negatively impacts their human rights, in some cases, generating criminal behavior, something that cannot be tolerated in a democracy.

Several laws and declarations prohibit discrimination, whatever its grounds; among them: Article 1, paragraph 3 of the National Constitution of the United Mexican States; articles 2.1 and 26 of the International Pact on Civil and Political Rights; article 2.2 of the International Pact on Economic, Social, and Cultural Rights; article 24 of the American Human Rights Convention; articles 1, 2.1, 2.2, and 7 of the Universal Declaration of Human Rights; article II of the American Declaration on the Rights and Duties of Man; and article 1.6 of the United Nations Millennium Declaration. These documents expressly prohibit discrimination based on ethnic or national origin, gender, age, disability, social or economic condition, health, pregnancy, language, religion, opinion, sexual preferences, marital status, or any other distinction aimed at impeding or annulling the recognition or the exercise of equal rights and equal opportunities for all.

For their part, article 14 paragraph 2 of the National Constitution of the United Mexican States; 14.1 of the International Pact on Civil and Political Rights; articles 8 and 10 of the Universal Declaration of Human Rights; article XVIII of the American Declaration on the Rights and Duties of Man; and articles 2 and 3 of the



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Basic Principles of the Independence of the Judiciary stipulate that every human being has the right to live in a state of law, under the force of a normative, coherent, and permanent judiciary, provided with certainty and stability that define the limits of public force vis-à-vis the holders of subjective rights, guaranteed by the power of the State, in its various levels of action.

Seen in this light, the individual's gender expressions, as well as sexual orientation/identity, are protected by Mexican law, which translates into the fact that nobody can be subjected to discriminating practices for these reasons. Moreover, there are federal entities that, in order to eradicate the "culture of rejection" against the LGBTTT community, have broadened the rights contained in their respective legislations, so as to obtain more and better protection and legal security. Ordinances exist that expressly prohibit discrimination on the grounds of sexual orientation/identity and gender expression; also, there are institutions, such as Mexico City's (Distrito Federal) DA Office, that have specifically instructed their employees to provide a dignified and respectful treatment to persons with non-heterosexual sexual preferences, and to transsexual persons.

It is important to mention that the Law to Prevent, Combat, and Eliminate Discrimination of Mexico State (the state surrounding the Federal District and containing important portions of the Mexico City metropolitan area), does not specifically mention sexual orientation/identity, nor gender expression; while the Law to Prevent and Eliminate Discrimination of Guerrero State, does include positive compensatory measures in its article 15, such as the investigation and punishment of homophobia-related hate-crimes. Discrimination on the grounds of sexual orientation is typified as a crime in the penal codes of Aguascalientes,



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Chiapas, Chihuahua, Coahuila, Colima, the Federal District, Durango, Tlaxcala, Veracruz, and Quintana Roo.

The penal codes of Coahuila, Campeche, and the Federal District, include “hate” as an aggravator in the crimes of assault and murder, permitting harsher sentences to be dictated against culprits who commit these crimes out of hatred against those that have a sexual orientation different from the heterosexual stereotype. It is also opportune to mention that the penal code of Baja California Sur, in its article 337, paragraph 2, only mentions gender discrimination as aggravator of the crime of offense described in the code’s preceding article, 336, but does not include sexual preference as a qualifier for discrimination.

HUMAN RIGHTS VIOLATIONS AND CRIMES COMMITTED AGAINST THE LGBTTT POPULATION

LGBTTT population has been described as “sexual minorities”, not necessarily an adequate term, since as of today there exists no census that can attest to their numbers and condition of “minority”. In Mexico, this population has often been marginalized by various sectors of society. But the most delicate issue is that wrongdoing against this population is often seen, in a way, as socially accepted conduct: it is ok to attack someone just because she or he has a non-heterosexual orientation or identity. What makes this a very delicate issue is that such “socially accepted conducts” go beyond mere “human rights violations” and constitute crimes such as discrimination, assault, and murder.



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For the CNDH, it is worrisome, besides the discrimination by individuals, that such segregation is present in various public institutions in the country, such as police forces and DA offices, just to mention a few. It is necessary to identify and eradicate the various forms in which this discrimination makes itself felt in public administration practices, as well as all those instances where there remains any legal support for said discrimination, because of a lack of culture for the respect of Human Rights.

As observed, LGBTTT individuals are subjected to harassment motivated by social stigmata that generate discrimination, understood as all forms of distinction, segregation and/or restriction based on gender, health, sexual preferences, or any other that aims to impede or annul the recognition and/or exercise of an individual's rights, promote inequality among people, attack human dignity, provoke or incite hatred, or prevent an individual from receiving services or installments rightly due, vex or exclude an individual, or violate said individual's labor rights.

Members of the LGBTTT population are often hindered to freely walk the streets, being harassed or arbitrarily detained just because of the way they look or the clothes they wear, for public demonstrations of affection, or for gathering in public places. When detained, they are subjected to offensive and discriminatory treatment, during interrogations, and while in custody. Also, their right to public assembly is restricted by authorities, who disperse them under the pretext of combating prostitution, or simply because they "set a bad example" or a "cause a bad impression" on the public.

Worse still is a fact recently made public in the media: the physical and psychological bullying in several of the nation's schools against homosexual teens



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or people identified with the LGBTTT community. This bullying is perpetrated not only by fellow students, but also by some teachers. This phenomenon, no doubt, generates a direct transgression against teenagers that have to face homophobia and discrimination for being of a “different” sexual orientation/identity, or gender expression.

The National Human Rights Commission has analyzed the information contained in 696 case files of wrongdoings against members of the LGBTTT community regarding their human rights. These case files come not just from the CNDH, but also from other public instances in charge of promoting and defending human rights in the country (OPDH), and from discrimination complaints presented to the CONAPRED. Case files also come from investigations in homophobia-related crimes (particularly discrimination, assault, and murder) in over 15 District Attorney’s offices. The case file breakdown is as follows:

Case Files Analyzed			
CNDH	OPDH	CONAPRED	DA-Offices
30	339	118	209

The main offences denounced in these case files are: discrimination on the grounds of sexual orientation/identity or gender expression, unlawful misuse of public authority, arbitrary detainment, maltreatment, inciting violence, arbitrary interference and attacks on the individual’s privacy, negligence and arbitrary interference in labor rights, refusal of services, theft, defamation, false declarations in front of authorities, among others.



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Homophobia-related rights violations and crimes							
CNDH	#	OPDH	#	CONAPRED	#	DA-Offices	#
Discrimination	11	Discrimination	126	Discrimination	73	Murder	162
Unlawful misuse of public authority	12	Unlawful misuse of public authority	119	Inciting violence and/or homophobia-related hate-crimes	16	Assault	30
Refusal of educational services	3	Arbitrary detention	64	Refusal or inadequate provision of educational services	12	Discrimination	3
Arbitrary detention	2	Refusal or inadequate provision of health care services	24	Arbitrary interference and attacks on the individual's privacy	11	Sexual crimes	3
Refusal or inadequate provision of health care services	2	Other violations	6	Negligence and arbitrary interference in labor rights	6	Other crimes	11
Total	30	Total	339	Total	118	Total	209

From the available data on the case files listed, the following facts can be highlighted: 12.9% of the aggrieved were women, 84.3% were men, 2.77% could not be determined; which means that mostly men suffer from human rights violations because of their sexual orientation/identity and/or gender expression. As



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to the victims' ages, they range from 6 to 79; however, most cases concentrate in the 15-34 age bracket.

It was also observed that gay men form the largest group of complainants (426 cases, mainly for discrimination and murder). The second largest group is that of persons whose condition could not be determined. Then come lesbian women (55 cases), transvestites (50 cases), and transgender persons (36 cases).

Most human rights violations and homophobia-related hate-crimes against LGBTTT persons were committed outside of Mexico City (379 cases). It must be noted, however, that the Federal District does comprise the most cases for a single federal entity (317 cases), followed by the states of Guanajuato (47 cases, of which 33 were murders), and Veracruz in third place (40 cases).

Most cases occur on the street, followed by detention centers, homes, and lastly, the workplace.

Among the authorities and public servants indicated as probably guilty of human rights violations, the largest group is comprised of state and local police officers (which are mostly responsible for arbitrary detainment, assault, threats, theft, extortion, breaking and entering, and excessive use of force). Second in number are officials from detention centers (who deny imprisoned homosexuals the request to be separated from the general population, but also harass them, provide deficient medical care, and allow other inmates to physically assault them). The third group consists of DA office employees (accused mainly of despotic treatment, discrimination, purposefully inaccurate depositions, inaccurate and/or deficient investigations, or outright refusal to initiate an investigation when a crime is



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reported). Also of note is that school officials are also accused of committing acts of discrimination against students and teachers.

V. CONCLUSIONS

FIRST. Mexico suffers from a discrimination problem against the LGBTTT population. If this problem is not addressed promptly and effectively, it will undermine human rights protection for the people of this population. Crimes and human rights violations related to sexual orientation/identity and gender expression are not isolated occurrences; they follow behavioral patterns of certain members of society and of certain public servants, such as prejudices, aversion, and rejection. This reflects a serious structural problem of intolerance, which needs the explicit acknowledgement and special attention by the authorities charged with the promotion of education, culture, respect for the legal system, and non-discrimination in the country.

SECOND. The issue of homophobia-related discrimination is fostering a new scenario for insecurity in Mexico, fed by the lack of human-rights respecting culture, and which is generating a high degree of vulnerability for the LGBTTT population. This in turn is translated into a high preoccupation of this community facing a government that does not always respond effectively, plus the generalized perception of impunity and other factors that represent incentives for committing crimes and human rights violations against them. For the LGBTTT population, this becomes a ubiquitous factor in their daily life, one which has repercussions when making decisions concerning work, family life, and, sometimes, even choices such as relocating. All of these affect their wellbeing and their quality of life.



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THIRD. Homophobia-related discrimination demands efficacy in public policies, mainly in the fields of education, health care, justice, and labor; i.e. that actions implemented by the Mexican government in various states must be reinforced to combat intolerance and bad practices, so that the LGBTTT population can have access to better safety conditions, that their dignity is protected, that they can enjoy—like the rest of the population—all rights recognized under Mexican law with no limitations. However, the present situation demands the launching of an institutional strategy that must achieve collaboration among the three levels of government and society, that must commit everyone in a collective effort to offer a united front in the fight against discrimination (with shared responsibilities in the planning, execution, and evaluation of all actions), beyond the mere discourse or statements of intent that will do little to curb a problem that demands tangible, quantifiable results with a clear orientation towards the intended goal of eradicating homophobia.

VI. PROPOSALS

In light of what has been presented in this report, the National Human Rights Commission extends the following proposals to all Mexican authorities responsible for public policy in the fields of health care, education, procurement of justice, and public safety (in their respective levels of government):

FIRST. It is necessary to reevaluate the efficacy of the current national strategy against discrimination, such that all economic, technological, material, and human resources allotted to it can be applied in oriented actions towards discrimination's prevention and eradication. A serious and profound policy in this matter must target



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the causes of intolerance and foresee measures in the social environment: infrastructure, education, civic participation, to prevent and combat any factor that can generate wrongdoings. It is necessary to promote more effective and integrated policies to prevent homophobia-related discrimination.

SECOND. In order to guarantee the respect of the human rights of the LGBTTT population in the broadest sense possible, the consideration of the following aspects is deemed convenient:

- 1) That the instances responsible for the prevention of discrimination in Mexico establish objective indicators to inform society of the statistical data regarding human rights violations and crimes committed against the LGBTTT population, in order to achieve its full prevention and eventual eradication.
- 2) Institutional practices that generate homophobia must be detected and eliminated, public servants that incur in wrongful and/or discriminatory actions against persons of the LGBTTT population are to be effectively punished.

THIRD. The CNDH considers it of fundamental importance that discrimination in Mexico be eradicated and that joint and coordinated work against it be promoted. It must be understood that this situation requires the commitment of everyone involved, and that success can be achieved only if responsibilities are stimulated and an identification with the issue of discrimination prevention is created, in order to enable actions oriented thusly:

- 1) Foster the strengthening of a wider culture of legality which promotes obedience to the law and avoids the proliferation of discrimination;



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- 2) Review reform projects as they are presented, so that the legislative processes do not imply setbacks in the matter of human rights;
- 3) Ensure the existence, within public institutions, of a diagnostic of the state of homophobia-related discrimination in the country, so that actions implemented have the reconstitution of the social fabric in mind, thus contributing to the betterment of the community's interactions;
- 4) It is clear that the Mexican State is the entity responsible for the safety of its citizens, that it must act, from a human rights perspective, through professional and competent institutions. Within the international framework of Human Rights, its responsibility must be expressed with due respect to them, and it must act in due diligence to prevent, punish, and eradicate such practices by government agents or individuals, that are harmful to persons, whatever the environment in which they occur.

FOURTH. It is necessary that every action implemented by the Mexican State to guarantee the safety of all Mexicans, reassure society and, above all, those persons in high degrees of vulnerability, that the government is undertaking the greatest of efforts to eradicate discrimination, and that the State assumes and redoubles its moral and constitutional commitment to obey the law, to have it obeyed, and to punish those that break it.

Traducción al inglés: Félix cortés Schöler