



ALTERNATIVE REPORT:

IMPUNITY AND VIOLATION OF JUDICIAL GUARANTEES OF THE HUMAN RIGHTS OF LESBIAN, GAY, BISEXUALS, TRANSGENDER AND INTERSEX PERSONS IN CRIMINAL CASES IN HONDURAS.

General Information

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I. Context EPU

The 2010 Universal Periodic Review (UPR) contained a series of recommendations to the Honduran State¹, including those aimed at protecting the rights of LGBTTI persons, such as a revision of national legislation and the adoption of plans that promote the protection of the human rights of the population.

As a result of these recommendations, the Justice and Rights Secretariat introduced a bill to Congress on March 9, 2011 through Official Document SDP-169-2011.

Also as a result of those same recommendations, in February 2011 the Security Secretariat announced the creation of specialized units, in both Tegucigalpa and San Pedro Sula, to investigate the murders of journalists and LGBTTIs. These units consisted of a Prosecutor, an analyst and three investigators, falling under the purview of the Prosecutor's Office for Ordinary Crime. Currently, the Units covering Social Impact Killings fall under the jurisdiction of the Public Prosecutor's Office for Crimes against Life at the Public Prosecutor's Office.

II. Legislative Reforms

In one single discussion by Congress, a reform to the Penal Code was approved on February 21, 2013 under Legislative Decree 23-2013, amending Sections 27, 118 and 321 which recognize Femicide as punishable under Honduran law, and include discrimination due to sexual orientation and gender identity in the legislation and therefore penalized within the Honduran legal framework. "**Committing a crime with hatred or contempt because of the sex, gender, religion, national origin, ethnic origin (belonging to indigenous and afro-Honduran peoples), sexual orientation or gender identity, age, marital status or disability, ideology or political opinion of the victim**" was added as an aggravating circumstance.

Likewise, Sections 118 and 321 of the Penal Code were reformed regarding the crime of discrimination - when the exercise of individual and collective rights is arbitrarily and illegally obstructed, restricted, reduced, hindered, or annulled, or if the provision of a professional service is denied on grounds of sex, gender, age, sexual orientation or gender identity, partisan activism, marital status, belonging to indigenous and afro-Honduran peoples, language, religion, physical appearance, disability and health, among others.

The following report contains data confirmed and checked with the Prosecutor's Office for Crimes against Life at the Public Prosecutor's Office. Such data is the result of institutional processes and the systematization of research and analyses of violent deaths of LGBTTI people and prosecuted and sentenced cases monitored and tracked through Cattrachas' Observatory on Violations of the Human Right to Sexual Diversity in Honduras.

Monitoring of **due process in case investigations** contains substantiated evidence of 129 violent deaths of LGBTTIs between 2010 and 2014. Of these, 28 cases have been tried, seven have ended in convictions, and ten have defendants in custody, of which six are awaiting an Oral and Public trial.

¹ Czech Republic, Colombia, Brazil, Ireland, United States, Netherlands

Alternative Report: Impunity and Violation of Judicial Guarantees of the Human Rights of Lesbian, Gay, Bisexuals, Transgender and Intersex Persons in Criminal Cases in Honduras. CATTRACHAS - Feminist Lesbian Organization in Honduras

Three have ended in acquittals, of which two have been appealed by the prosecution. The defendants are men, and of 28 cases tried, seven have been in favor of transgender women. Of 12 cases involving lesbians, four have been tried.

The sustained increase in violent deaths involving people from the sex-/gender-diverse community between 2010 and 2014 shows that the State's strategy of implementing a specialized investigation unit is a link in, but not a solution to, the institutionalized and culturally ingrained problem of discrimination based on sexual orientation and gender identity

III. Historically in Honduras, the abuse, murder and violations of the human rights of the lesbian, gay, bisexual, transgender, transvestite and intersex community based on sexual orientation or gender identity have been systematic. Human rights defenders are criminalized through improper use of hate campaigns in the media, where it has made a business of promoting hate and financially profiting from it with the acquiescence of the State. The reality is that impunity is prevalent and even justified. Actions by the State within the justice system are non-existent, as we have expressed in the analysis made of the emblematic case of Pastor Evelio Reyes:

Impunity and Violation of Judicial Guarantees

Context of the crime of discrimination against lesbian and gay people

File # 1530-2013 judge N° 16

Since July 23, 2013, which is when Mr. Evelio Reyes, leader of the Vida Abundante Evangelical Church and of the Evangelical Brotherhood, testified as a defendant accused of the alleged crime of discrimination against sexually diverse people - later publicly claiming that there was a "persecution of the Church" – he has been appealing to citizens, Christians and the Church to unite to **"fight to repeal the reforms to Section 321"**. According to the evangelical pastor, **"...this affects us all"**, and reiterates that **"...the law should never protect the few"**. Furthermore, **he incites young people**, to whom the religious leader says: **"I have issued the challenge of having convictions, living by your convictions, and even dying for them"**.

The judicial process established:

- a) **The court case brought against Mr. Evelio Reyes is not due to persecution of the Evangelical Church** because we respect freedom of religion, and the free exercise of religion is an individual right guaranteed by Section 77 of the Constitution. However, **"these rights to freedom of conscience and religion cannot be invoked to justify political laws or practices that deny the right to equal protection under the law or which discriminate on grounds of sexual orientation or gender identity"**.

² Section 321.- Any person who arbitrarily and illegally obstructs, restricts, reduces, hinders or annuls the exercise of individual and collective rights or denies the provision of a professional service on grounds of sex, gender, age, sexual orientation, gender identity, political affiliation or opinion, marital status, ethnicity (belonging to indigenous and afro-descendant peoples), language, nationality, religion, family affiliation, economic or social status, different abilities or disabilities, health status, physical appearance, or any other that violates the human dignity of the victim, shall be punished by imprisonment for three (3) to five (5) years and a fine between thirty thousand (L.30,000.00) and fifty thousand Lempiras (L.50,000.00). The punishment shall be increased by one-third (1/3) when the incident is committed with violence. When the incident is committed by a civil servant or public servant in the exercise of his duties, and if it were a case of recidivism, the official or public employee will be punished, in addition, with special disqualification for a period of time equal to twice that spent imprisoned. If the perpetrator is a foreign national, he will be deported from the national territory once the sentence has been served.

- b) **The State of Honduras is secular. Section 77 paragraph 2 of the Constitution of the Republic stipulates that Ministers of the various religions may not hold public office or in any way engage in political propaganda invoking religion or using, as a means to this end, the religious beliefs of the people.** It is contrary to the Constitution for Ministers of the Faith to support any individual party and to discriminate against people aspiring to hold public office solely based on their sexual orientation or gender identity. The electoral process in a democratic country must be kept separate from the Church, regardless of the religious doctrine it professes
- c) **Everyone has the right to an effective remedy before the relevant judges or courts that protect them against acts that violate their fundamental rights** - including the right to a sexual identity or orientation other than heterosexual. It is, therefore, **the competent court**, based on the law, which will declare **whether to uphold or dismiss, and will rule regarding the appeal lodged** by the people who consider to be affected by the religious leader's actions, statements and suggestions regarding the appeal to "NOT vote for people with sexual identities or orientations other than those tolerated by him, based on his religion", and by his opinions which clearly express his contempt for these Hondurans
- d) The citizens who feel affected have always expressed that at no time have they ever acted against Mr. Reyes because of his religion or because of his status as a religious leader, nor have they ever made comments against Churches. **He has simply been asked to respect human dignity and the individual differences in a secular State, based on the principle that all Hondurans are equal under the law and that discrimination must stop.**
- e) A Charge for Related Crime - discrimination against LGTTBIs - was filed, requesting: [1] Accumulation of processes - File 1530-13.- [2] Extension of statement by the accused - new acts of aggravated discrimination.- [3] Admission of documentary evidence of new discriminatory acts and their resulting effects.- [4] Measures to counteract the effects of the crime - generation of hatred against LGTTBI people, so that the **media guides its opinions, reflections and surveys towards generating understanding, respect, justice and protection for all citizens** and avoid becoming a source for inciting hatred and promoting discrimination, contempt and intolerance against individuals or groups, as these are the conditions that are ideal for the making of violent persons and societies.

Statements such as "**the Church is persecuted**" in a predominantly Christian country, or inciting young people to "**die for the cause**", and/or linking sexual orientation and gender identity to illegal issues and practices such as bestiality and pedophilia, only lead to contempt and promote intolerance among citizens. Referring to these false arguments incites hatred, and only contributes to adding to the violent deaths of 178 LGTTBI people - 74 transsexuals, 92 gays and 12 lesbians - in Honduras since 1994.

Due process violations in the Evelio Reyes case

Religious speech against homosexuals and lesbians, and creating a climate of hate:

«We are appealing to not vote "for gays and lesbians who corrupt God's models and good customs, and who put future generations at risk". »

«We are before a persecution of the Church and an attack to...the freedom of expression and of practicing and disseminating a creed, a doctrine, a religion. From this moment I want to say for the record, I will not take anything back, nor will I apologize or reach a compromise with anyone over this Word that is sacred and eternal...I appeal to citizens and Christians to "unite because there is a task pending to be performed. The reforms to Section 321 affect us all, and I call on the Church to fight to repeal the reform...I appeal to young people, whom I have challenged to have convictions, to live by their convictions and to even die for them.»

Judicial and Social Action Taken

- a. Complaint to the Special Prosecutor's Office for Human Rights
- b. Private charges before the Criminal Court
- c. Petition backing the LGBTI community regarding «making the weapon used against them disappear from the social construct: "the attack against faith and the Church"»
- d. Demanding the effective realization of the principle of Equality and Non-discrimination in the interpretation of Section 321 of the Penal Code in force on the date in which the events took place: «Applicable regulation on sex discrimination includes discrimination due to sexual orientation according to Human Rights Committee jurisprudence. »
- e. Witness statements from the plaintiffs regarding the damage to their lives - moral, personal and to their families - caused by the discriminatory speech.
- f. Judicial request for measures to counteract the effects of the crime: Generating a climate of hatred against LGTBIs
- g. Submission of documentary and audiovisual evidence
- h. Providing proof of public statements against LGBTI people and the adverse social reactions generated by them.
- i. Legal support to a represented party, a transsexual person, attacked on the street the Friday prior to the initial hearing.
- j. Security plan and temporary placement of the victim in a protected location.
- k. Before the Courts, denouncing in the private charges the discriminatory action of «calling citizens to join the task of repealing the reforms to Section 321 of the Penal Code», so that in the future, lesbian, gay or transsexual people cannot demand judicial protection by invoking this legal precept.
- l. Request for revocation of the dismissal with prejudice for damage to the enjoyment of the private sphere.
- m. Request for Reconsideration asking the judge to issue a ruling regarding what was requested (Judicial Response = Declared Inadmissible)
- n. Appealing the Dismissal with Prejudice (Judicial Response = Declared Inadmissible)
- o. Appeal (waiting for the Court to rule; the legal time to do so has expired)

Principles of international human rights law and Duties Required of the State

- a) Personal Security
- b) Right to Employment and to Participate in Public Life
- c) Equality and Non-discrimination
- d) Right to Privacy
- e) Freedom of Opinion and Expression
- f) Freedom of Thought, Conscience and Religion
- g) Universal Enjoyment of Human Rights

Duty of the State:

- a) Punishing violence; ensuring that there is no justification of it
- b) Ensuring equal opportunity in public service, Government, and public functions.
- c) Taking measures to eliminate stereotypes and prejudices which prevent or restrict participation in public life.
- d) Effective realization of the principle, interpreting criminal law in harmony with the higher-ranking international legislation
- e) Ensuring enjoyment of private sphere, personal decisions, human relationships and consensual sexual activity, without arbitrary interference
- f) Ensuring that public order, morality, health and public security will not be used to restrict, in any way, the exercise of the freedom of opinion and expression of sexual diversity.
- g) Ensuring that practical expressions and the promotion of opinions, convictions and beliefs regarding sexual orientation or gender identity are not incompatible with human rights.
- h) Legislation compatible with the universal enjoyment of human rights

State Response

The Administrating Entity requested an indictment for the offense of discrimination. In its ruling, the Judicial Entity justified the discriminatory speech and ordered a dismissal with prejudice without ruling on the reported event. It also declared **inadmissible the Appeal for Reconsideration** filed because of the judicial omission observed.

The judicial entity ruled that "the degree of harmfulness against the plaintiffs or any person with a sexual orientation other than heterosexual was not established", establishing a restrictive judicial interpretation in that the defendant «did not speak of sex», and instituting a judicial omission with regard to the measure requested and the admission of the documentary evidence provided.

Plaintiffs' Request for Due Process so that the Court finds:

- a. The defendant is criminally liable for incitement to violence and the non-justification of the discriminatory speech.
- b. Call for its exclusion from public spaces, as it is a threat to the right to equal opportunities.
- c. The content of the speech is stereotypical and bigoted to the prejudice of citizen rights of lesbian, gay and transsexual people.

- d. The inclusion of sexual orientation in sex-based discrimination, according to international jurisprudence in accordance with the rank of international law.
- e. Four testimonies by plaintiffs are considered circumstantial evidence of the damage that the discriminatory speech and the climate of hatred generated caused to their private and family life.

According to Human Rights Committee jurisprudence:

- a. The necessary restriction of the freedom of expression, conscience and religion, when such expressions or promotion of ideas, beliefs or convictions generates such hostility toward a group of people that their lives, integrity or personal safety are put at imminent risk.

Recommendations to the State of Honduras

- 1. That the State of Honduras does not reduce or restrict the LGBTI people's access to the judicial protection afforded by Section 321 of the current Penal Code for acts of discrimination.
- 2. That the State of Honduras ensures that justice operators, in particular those assigned to administer justice with LGTTBIQ+ populations, possess competent knowledge of the human rights of sexual diversity.
- 3. That the State of Honduras applies fundamental selection criteria for justice operators, using a gender approach.
- 4. The State of Honduras must ensure that the administration of justice in investigative entities, the Public Prosecutor's Office, the Public Defender's Office, and Supreme Court must be framed in the duty to respect and guarantee the people's rights in a Secular State.
- 5. Creation of a specialized, technical and binding unit from the *Universidad Nacional Autónoma de Honduras* (National Autonomous University of Honduras) aimed at facilitating the analysis of the socio-scientific reality and the State of Honduras' level of fulfillment of its duty to respect and ensure rights within the framework of the regional and universal system of human rights of the lesbian, gay, bisexual, transsexual and intersex population.