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CATTRACHAS

Comunidad Gay Sampendrana

Foro Nacional de VIH/SIDA

Global Rights

Grupo KUKULCAN

Grupo Arcoiris

International Gay and Lesbian Human Rights Commission

Introduction

The University of Virginia International Human Rights Law Clinic is honored to have the opportunity to participate in the writing of this shadow report on the status of lesbian, gay, bisexual and transgender (LGBT) individuals in Honduras. Working in cooperation with Global Rights and their contacts in Honduras, we gathered the information in this report with the hope that it would serve as a starting point for advocacy of greater protection and promotion of the rights of LGBT persons in Honduras.¹

The Human Rights Committee regularly reviews submissions from every state party to the International Covenant on Civil and Political Rights (ICCPR). Honduras ratified the ICCPR on August 25, 1997 and will present their regular report to the Committee on October 16-17, 2006. Non-governmental organizations may submit “shadow reports,” which serve as an additional source of information for committee members. In the shadow reports, NGO’s offer their own evaluation of the state’s compliance with the treaty.

We hope that the findings in this report will be useful to the Human Rights Committee, as well as serve as a catalyst for future advocacy efforts.

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Executive Summary

Article 60 of the Honduras Constitution states that all individuals are equal before the law, and that “discrimination on the basis of sex, race, class, and any other basis harmful to human dignity shall be punishable.” Yet despite this seemingly inclusive provision, LGBT individuals face serious human rights violations because of their sexual orientation and gender identity.

Underlying all of the human rights violations outlined in this report is a generalized discriminatory culture with respect to LGBT individuals and their communities. Actions fueled by this sort of animus against LGBT individuals were held to violate Articles 2(1), 17 and 26 of the ICCPR in *Toonen v. Australia*.² Although that case specifically concerned the criminalization of private sexual activity by consenting same-sex adults, the Human Rights Committee in *Toonen* clearly stated that sexual orientation is included in the reference to sex in the ICCPR. Therefore, Articles 2(1) and 26 prohibit discrimination based on sexual orientation.

Despite numerous instances of discrimination against Honduran LGBT individuals and organizations, such as those described in this report, and the fact that the ICCPR prohibits such acts, the periodic report submitted by the Honduran government made no mention of a need to protect LGBT rights.³ Yet, many incidents have transpired that seriously impact the rights of LGBT individuals, and the Honduran government has an obligation under the ICCPR to address them.

This shadow report was made possible through the work of numerous Honduran LGBT activists and NGOs, who shared information and reports with us.

Substantive Violations of the Convention

Articles 2(1) and 26 (Non-discrimination)

Articles 2(1) and Article 26 of the ICCPR set out the non-discrimination standards to which signatories will be held. Under Article 2(1), state parties “undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26 recognizes that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”, prohibits “any discrimination”, and “guarantee[s] to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In *Toonen v. Australia*, the Human Rights Committee clearly stated that sexual orientation is included in the reference to sex in the ICCPR.⁴ Therefore, Articles 2(1) and 26 prohibit discrimination based on sexual orientation.

² *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

³ Initial Report Submitted by Honduras to the Human Rights Committee, U.N. Doc. CCPR/C/HND/2005/1, April 26, 2005.

⁴ *Toonen v. Australia*.

For over two decades, there have been reports of direct and indirect government discrimination and other human rights violations towards LGBT individuals in Honduras. A 1996 report published by the International Lesbian and Gay Association (ILGA) traces such violations, which began to emerge in 1985 when the first cases of HIV in Honduras were reported.⁵ The first reported cases of HIV in Honduras involved gay men, and as a result, a significant amount of animus was directed against the gay community. Since then, the atmosphere in Honduras has been one of hostility towards LBGTI individuals, resulting in pervasive discrimination and various human rights violations.

Despite the rise of LGBT advocacy associations, the Honduran government still engages in widespread discrimination against the LGBT community. For example, in 2002, the government passed the “Ley de Policía y de Convivencia Social” (The Police and Citizen Coexistence Law, hereinafter “Coexistence Law”), which granted substantial power and discretion to police forces to take action for the preservation of public morality and decency.⁶ Despite the fact that Article 2 of the Law expressly states that its application shall be consistent with the principles, rights and guarantees of the Honduran Constitution, international treaties and conventions, Elkyn Suárez Mejía, a well-known Honduran LGBT activist, has noted that the Coexistence Law is often used to give force to the anti-gay movement, since the government views the rights of sexual minorities as being in conflict with public decency and morals.⁷ As a result of the Law, the LGBT community has faced increasing levels of public and private discrimination, as this report highlights.

The workplace is an area of substantial discrimination against LGBT individuals. Although there are no laws that allow employment discrimination on the basis of sexual orientation, there are no laws preventing such actions either. As a result, employers frequently discriminate against LGBT employees and job applicants.⁸ The main workplace anti-discrimination provision, Article 12 of the Labor Code, does not explicitly include sexual orientation as a prohibited ground of discrimination;⁹ therefore, the law is effectively ignored with respect to LGBT individuals. In

⁵ Ordoñez, Juan Pablo and Richard Elliot, *Cleaning up the Streets: Human Rights Violations in Colombia and Honduras* (International Lesbian and Gay Association, 1996, hereafter “ILGA, Cleaning up the Streets”), available at http://www.ilga.info/Information/Legal_survey/americas/supporting%20files/cleaning_up_the_streets_.htm.

⁶ *Ley de Policía y de Convivencia Social*, Decreto 226-2001, gaceta no. 29,726, 7 March 2002, available at: <http://www.glin.gov/view.do?documentID=89222&summaryLang=en&fromSearch=true>. Article 1 cites the function of the police is, among other things, “to safeguard the fulfillment of the laws and regulations that aim to protect the life, honor, well-being and beliefs of the people; maintain public order...; restore domestic order...; [and] preserve public morality [and] health as well as historical and cultural heritage...”
See also, Article 5 (5).

⁷ Amnesty International, *Honduras: Transgender women living in virtual prison* (29/9/2004, AMR 37/011/2004, hereafter “Amnesty International, Transgender women”), available at: <http://www.amnestyusa.org/countries/honduras/document.do?id=7CC64ACFAB34282E80256F1F0052A1F1>.

⁸ U.S. State Department Country Conditions Report on Honduras 2005 (March 8, 2006, hereafter: “State Department Report on Honduras”), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61732.htm>.

⁹ *Código del trabajo y sus reformas*, Decreto 189-59, gaceta no. 16,827, 15 July 1959 (“Se prohíbe la discriminación por motivos de raza, religión, credos políticos y situación económica, en los establecimientos de asistencia social, educación, cultura, diversión o comercio, que funcionen para el uso o beneficio general en las empresas o sitios de trabajo, de propiedad particular o del estado. La posición social o el acceso que los trabajadores puedan tener a los establecimientos a que se refiere este artículo, no podrá condicionarse al monto de sus salarios ni a la importancia de los cargos que desempeñen.”), available at:

addition, employers rarely face official penalties or reprisals by the victims. Other instances of workplace discrimination that specifically target lesbian women and *travesti* (transgender) individuals are further outlined below.

Discrimination against HIV-positive individuals, a population group that often overlaps with the LGBT community, is also commonplace in Honduras. According to UNAIDS, in 2005, 13% of men who have sex with men were living with AIDS.¹⁰ Although Honduras accounts for only 17 percent of Central America's population, the nation has 60 percent of AIDS cases in the region.¹¹ San Pedro Sula is the AIDS capital of Central America, and is home to 60 percent of Hondurans with AIDS.¹² LGBT individuals, particularly sex workers, are especially at risk for contracting HIV and AIDS.

Employers may also use HIV status as a proxy for sexual orientation.¹³ In addition to social prejudice, sexual minorities and people living with HIV/AIDS commonly experience discrimination in employment, housing, and basic services. For example, the Honduran NGO, Red de Hombres Gay Positivos, has alleged that some employers require job applicants to submit to blood tests. Although the employers supposedly used the tests to detect for syphilis, Red De Hombres Gay Positivos claims the true goal is to weed out HIV-positive applicants.¹⁴

There is currently no legislation in Honduras addressing the rights of people living with HIV/AIDS. As a result, LGBT groups that do HIV and AIDS work are often discriminated against.¹⁵

Article 3 (Gender Equality)

The U.N. Special Rapporteur on Violence Against Women considered in her 2005 report the extent to which sexual orientation is a ground of inequality that specifically affects women.¹⁶ Lesbians and other women who live outside of heterosexual norms are often subjected to violence, rape, and other forms of discrimination and harassment. Thus, sexual orientation often compounds the human rights abuses suffered by lesbian women.

Lesbians often endure a double dose of workplace discrimination, as they may face prejudice based on their gender, their sexual orientation or both. A recent report written by a group of

<http://www.leyesvirtuales.com/masbuscado.asp?decreto=189-1959>. See also, Amnesty International, *Honduras: Transgender women living in virtual prison* (2004).

¹⁰ UNAIDS County Situation Analysis.

¹¹ *Id.* See also, Follow up Report to the Declaration of Commitment on HIV/AIDS Honduras 2005, Prepared for the UN General Assembly Special Session on HIV/AIDS p. 7, available at

http://www.unaids.org/unaid_resources/UNGASS/2005-Country-Progress-Reports/HONDURAS_en.pdf.

¹² amfAR Report on AIDS epidemic in the Caribbean and Latin America, Honduras, available at

<http://www.amfar.org/cgi-bin/iowa/programs/globali/record.html?record=138>.

¹³ See State Department Report on Honduras.

¹⁴ ILGA, *Cleaning up the Streets*. See also, State Department Report on Honduras.

¹⁵ State Department Report on Honduras.

¹⁶ Report of the UN Special Rapporteur on Violence Against Women, Yakin Ertürk, "Integration of the Human Rights of Women and the Gender Perspective," p. 50, para. 179, UN Doc. E/CN.4/2005/72/Add.1 (18 March 2005) (hereafter Report of Special Rapporteur on VAW").

Latin American NGOs documented instances of job discrimination against lesbians.¹⁷ Interviews with Honduran lesbians showed various levels of workplace discrimination. The women interviewed described being passed over for promotion, denied employment due to masculine style of dress, harassed by co-workers both in and outside the workplace, and stalked by male co-workers. In order to avoid these discriminatory actions, which were usually tolerated and supported by the management staff, the women were forced to hide their lesbian relationships. Doing so over long periods of time had negative effects on their mental and physical health.¹⁸

In the workplace, transgender individuals, transvestites and other “effeminate” gay men are often marginalized into menial, stereotypical jobs such as hairdressing, floristry, and seamstressing, as well as the sex trade. Men who are perceived as homosexuals also frequently encounter discrimination in housing.¹⁹ Thus, some groups of men and transgender women (or *travestís*²⁰) are also subjected to human rights violations based on their gender, which compound with discrimination they already face due to their sexual orientation.

Article 6 (Right to Life)

Extrajudicial killings based on the victim’s sexual orientation by either state or non-state actors violate Article 6 of the ICCPR. Following her visit to Honduras in August 2001, the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions reported on death threats directed at and killings of members of sexual minorities.²¹ Her report noted NGO allegations that approximately 200 gay and transgender sex workers were murdered between 1991-2001.²² The Honduran government’s reaction to these homicides has been almost nonexistent, as few of the cases were officially registered and even fewer have been formally investigated.²³ What follows are a sample of the many crimes.

On September 3, 1998, a *travesti* sex worker, Israel Reyes, also called Sanyi, was shot to death. Police suspect that she was murdered by a client who didn’t want to pay for his services. A transgender sex worker who worked with Sanyi was quoted in a newspaper report on the murder that crimes against homosexuals are a regular occurrence and generally remain unsolved and unpunished.²⁴

¹⁷ International Gay and Lesbian Human Rights Commission (IGLHRC), “*Unnatural, Unsuitable, Unemployed: Lesbians and workplace discrimination in Bolivia, Brazil, Colombia, Honduras and Mexico*” (2005), original on file with IGLHRC.

¹⁸ *Id.*, at 105.

¹⁹ UNAIDS, Country Situation Analysis, Honduras (hereafter, “UNAIDS Country Situation Analysis”), available at http://www.unaids.org/en/Regions_Countries/Countries/honduras.asp.

²⁰ In Spanish, the term *travesti* is often used to refer to transgender, transsexual or transvestite individuals. However, *travesti* does not literally translate into English. It instead refers to a Latin American group of people who have a separate identity from those who in English would be known as a transgender or transvestite individual. Therefore, we have chosen to retain use of the term *travesti* whenever it is used in a Spanish-language source.

²¹ Report of the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Mission to Honduras, p. 23, para. 68, UN Doc. E/CN.4/2003/3/Add. 2 (14 June 2002) available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G02/140/28/PDF/G0214028.pdf?OpenElement>.

²² *Id.* See also, “HONDURAS: Human Rights Violations against lesbian, gay, bisexual and transgender people,” Amnesty International [hereinafter “Amnesty Int’l Honduras Report 2003”], p. 2, AMR 37/014/2003 (September 1, 2003), available at: <http://web.amnesty.org/library/Index/ENGAMR370142003?open&of=ENG-HND>.

²³ *Id.* Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, p. 23, para. 68.

²⁴ “De tres balazos matan travesti,” *La Tribuna*, Sept. 3, 1990.

Perhaps one of the most infamous cases of homicide motivated by gender orientation was the death of Ericka David Yañez on July 15, 2003. Yañez was a nineteen year old sex worker, who was also a *travestí* member of Comunidad Gay Sampedrana, an LGBT rights NGO based in San Pedro Sula. According to witnesses, two San Pedro Sula policemen driving an official police car were looking for the services of a prostitute. They got into an argument with Yañez when they realized she was a transgender person. Their altercation escalated as the officers attacked Yañez, ending when one shot Yañez with his service weapon.²⁵

Although the Yañez killing is tragic in and of itself, the aftermath of her murder highlights other human rights violations, in particular, the failure to prosecute crimes against LGBT victims and threats to human rights defenders. After Yañez was killed, Elkyn Suárez Mejía, also a *travestí* member of Comunidad Gay Sampedrana, reported vital information regarding the murder to the authorities. Mejía's testimony resulted in the arrest of the two police officers. After their arrests, however, Mejía began to receive death threats. The most serious of these threats came from one of the officers charged with Yañez's murder. The officer confronted Mejía on the street where she was working and told her that if she did not withdraw the case within 24 hours, she would be killed. Mejía reported these threats and asked for police protection. Her request was granted, but only for a limited period, and she remained without protection when one of the officers escaped from police custody.²⁶ As a result of the lack of any significant protection from the government and the growing numbers of threats sent to her and to the offices of Comunidad Gay Sampedrana, Mejía fled Honduras in September, 2003.²⁷ Although the initial investigation and police protection offered to Mejía is commendable, the Honduran government cannot abandon an investigation or tolerate threats to a key witness in a crime motivated by the victim's sexual orientation.

In addition to the murders of over 200 transgender persons and sex workers, other killings have resulted from the animus to the LGBT community. Like the Yañez murder, many of the other killings remain unreported and uninvestigated by authorities. For example:

On July 15, 2004, the body of Victor Manuel García Baquedano, a gay man, was found hanging by a sweater tied around his neck from a bridge in Comayauela. The police found it suspicious that Victor's hands were gripping the sweater around his neck, as if he had resisted dying in that manner, suspended 10 meters above the ground, and expressed doubt regarding whether the death was a suicide or a murder.²⁸

Oscar Orlando Murillo Zelaya, a *travestí* sex worker also known as Leonela, was severely beaten by agents of the Policía Preventiva (station number 4) in Comayagüela on August 15, 2004. She had been taken to the station, and was detained until late the same day, without being permitted to communicate with anyone, or be seen by a doctor. As a result of the assault, she developed

²⁵ Amnesty Int'l Honduras Report 2003, p. 2.

²⁶ *Id.*, p. 3.

²⁷ Amnesty International, Transgender women, p.

²⁸ "Ahorcado de un puente con sueter hallan joyen 'gay,'" *La Tribuna*, July 15, 2004.

clots and swelling on the legs, face, back and arms, fever and headaches. Leonela was then fatally stabbed on September 6 2004, allegedly by a group of homophobic persons.²⁹

Recently, on August 15, 2006, Javier Enrique Hernandez, a gay man and member of Comunidad Gay Sampedrana, was found dead in his apartment in San Pedro Sula. He was found lying face down in a pool of blood, with his hands and feet tied. A tee shirt was tied around his neck, and wire was wrapped around the tee shirt. There was evidence that Hernandez had been tortured before his death. The police classified the case as a robbery because the apartment was in disarray and some valuables were missing.³⁰

Article 7 (Freedom from Torture and Cruel, Inhuman and Degrading Treatment or Punishment)

Due to recent events worldwide, human rights defenders have paid significant attention to violations of Article 7. In a 2001 report, the UN Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment addressed in part the issue of torture of LGBT individuals.³¹ The report concluded that sexual minorities everywhere are disproportionately subjected to harassment, humiliation and other violations affecting their fundamental human dignity.³² Such acts by state officials clearly violate Article 7 of the ICCPR.

Police brutality towards members of the LGBT community has been documented since the early days of the Honduran anti-gay movement during the 1980s. Although levels of overt violence have lessened since the mid-1980s, there are still many instances of cruel, unusual or degrading punishment by state actors that are motivated by the victims' sexual orientation. As previously noted, in May 2002, when Honduran President Ricardo Maduro signed the Coexistence Law, the police were permitted to restrict the movement or presence of individuals in public areas in order to preserve morality and decency and to protect public safety. In reality, police use the Coexistence Law to target LGBT individuals for harassment, intimidation, and physical and emotional abuse.

In June 2003, Santos Rafael Zuniga, a transgender sex worker, was detained at police station no. 4 in Comayagüela by two police officers who demanded sex. When she refused them, they began to torture her. They hit her in the face and all over her body with their batons, kicked and pulled her hair, and sexually abused her. These officers were active agents of the Policía Nacional Preventiva.³³

Some of the worst abuses are suffered by gay and transgender sex workers. Sex workers regularly face harassment, arrest and abuse by police. One night in February 2004, Edwin Oliver Alonzo G., a *travestí* also known as Marijose, was working on Calle Real de Comayagüela when

²⁹ Report of the UN Special Rapporteur on Violence Against Women, Yakin Ertürk, "Integration of the Human Rights of Women and the Gender Perspective," p. 50, para. 179, UN Doc. E/CN.4/2005/72/Add.1 (18 March 2005) (hereafter Report of Special Rapporteur on VAW"). The incidents in this report were jointly reported to the Government of Honduras with the UN Special Rapporteur on Torture (*Id.* p. 49, para. 172).

³⁰ "Atado de pies y manos hallan muerto al contador 'Comunidad Gay Sampedrana'", *La Tribuna*, August 15, 2006.

³¹ Report of the UN Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nigel Rodley, p. 6-7 (UN Doc. A/56/156, July 3, 2001).

³² *Id.*, p. 6, para. 19.

³³ Report of Special Rapporteur on VAW, p. 49, para. 174

two police officers approached her and demanded she have sex with them in exchange for them allowing her to keep working. She refused, and they proceeded to beat her, hitting her in the face and kicking her when she fell to the floor. They tore at her clothing, yelling obscenities while spraying tear gas in her face. They beat her with the butts of their guns on the back and on the legs. She was detained for 12 hours without access to a lawyer or a doctor, also a violation of Articles 9 and 10. As a result of the beatings, Marijose suffered bruising and swelling of the legs, face, and back, cuts and scrapes on his arms, as well as emotional and psychological trauma. The police officers involved were both active agents of the Policía Preventiva.³⁴

On August 15, 2004, Paulina Lat Martinez Lara, a transgender sex worker, was among a group of sex workers on Calle Real de Comayagüela. Around 11:30 a.m., a group of police officers approached the group and began to harass and abuse them. Three of them suffered brutal beatings, including being struck with the butts of the officers' guns while police shouted obscenities at them. They were then arrested and taken to the police station.³⁵

NGOs have documented other cases where LGBT individuals were subjected to torture and cruel, inhuman or degrading treatment or punishment.³⁶

Article 9 (Right to Liberty and Security of Person)

Many of the human rights abuses already discussed in this report are also violations of the right to liberty and security of person, as the right to liberty under the ICCPR prohibits arbitrary and unlawful arrests and unjustified detentions. Thus, instances of police violence against detained transgender individuals, transvestites, sex workers, and other members of the LGBT community can also be construed as violations of Article 9.

As noted above, the Coexistence Law contains various articles that give police broad discretion. Article 54 allows the police to limit or restrict the movement or presence of individuals in public places. Article 100 establishes that a person who appears suspicious and fails to give a reason for his or her presence in an area may be taken the police station in order to be identified and subjected to surveillance in order to protect the public. Articles 128 and 141, in defining the penalties under the law, allow police to take "corrective measures", from issuing of tickets, confiscation of property, obligatory community service to temporary detention. A number of documented incidents indicate violations of Articles 10 (treatment of individuals deprived of their liberty), 7 (freedom from torture, and cruel, inhuman or degrading treatment or punishment), and in some cases, 6 (right to life).

A *travesti* and sex-worker, J.L.C., was severely beaten by members of the M1-19 patrol of the Policía Preventiva on March 26, 2003. During [her] detention, she was not permitted to communicate with her lawyer or anyone else. This case was presented to the National Human Rights Commission, and submitted to the internal affairs department of the police. Concluding that excessive force resulting in injuries was used by police, the Commission remanded the case to the Office of the Public Prosecutor of Human rights in 2003 July. However, the public

³⁴ *Id.*, p 50, para. 175.

³⁵ *Id.*,p. 50, para. 178.

³⁶ For example, Cattrachas has compiled several more cases of police brutality towards detained individuals. *See Id.* Pp 49-50.

prosecutor assigned to the case was transferred and the process became practically paralyzed, supposedly due to the failure of the Office of the Public Prosecutor to carry out the investigation. After his case against the police was presented J.L.C. became the target of threats by members of the police force.³⁷

On January 5, 2004, three members of the NGO Comunidad Gay Sampedrana, Erick Orellana, Javier Tejada and Ramón Valladares, were arrested by police in the San Pedro Sula neighborhood of Colonia Planeta. The three men were returning home from a friend's house close to the police headquarters. As they passed the police station, some policemen asked them where they were going and they explained that they were returning home. The police told them that they were being arrested under article 54 of the Coexistence Law. Fortunately, the men were released three hours later, following the intervention of a respected individual in the community who stood up for their character. Upon their release, the men were told that they had been detained for their own safety, since the police station was safer than Colonia Planeta. This incident is also a violation of Article 23, the right to freedom of association.³⁸

M.M.M., a 20 year old *travestí*, also a commercial sex worker, was assaulted by police agents of Manchen, in Tegucigalpa, on March 19, 2004, while looking for work in the Zona Hotel Honduras Maya in Tegucigalpa. The agents tried to get her to have sex with them in exchange for being allowed to work. They also tried to take all the money that she had on her. When she refused, they beat her on the face and violently kicked her. They ripped her clothing, insulting and threatening her with the butts of their guns. A few days later, a few police agents dressed in civilian clothing shot her in the face. She was immediately admitted to the Hospital School of Tegucigalpa with bullet lodged in her trota. No formal charges were brought against the police she feared retaliation.³⁹

On April 16, 2004, J.R.F.R, a 25 year old *travestí* and sex worker, was harassed and beaten, hit with the butt of a rifle, and threatened by security agents of the Estado Mayor Conjunto (Joint Chief of Staff) in Comayagüela. Subsequently, she was detained. As a result of these beatings, she suffered bruising and swelling of her face, back and arms.⁴⁰

O.A.Z, a 34 year old *travestí* and sex worker was beaten, including being hit with the butt of a gun, by agents of the Policía Preventiva of Comayagüela on August 15, 2004. She was then taken to the police station where she was held for hours, denied medical care or any communication with the outside world. She suffered bruising and swelling of her legs, face, back, and arms, a fever, and head pain. Later that year, on September 6, 2004, O.A.Z. was found stabbed to death. The murder was apparently motivated by homophobia.⁴¹

Forced displacement is also a common occurrence that negatively impacts LGBT rights in Honduras. Such relocations are usually committed against sex workers, many of whom are

³⁷ *Id.*, p. 49, para. 173.

³⁸ Amnesty International, "Honduras: Human Rights Violations Against LGBT (Update II)," AMR 37/001/2004, (Feb. 14, 2004), *available at*: http://action.web.ca/home/lgbt/alerts.shtml?x=52759&AA_EX_Session=30c054b3d8d7a103ce52433cdef808e6.

³⁹ Report of Special Rapporteur on VAW, p. 50, para. 176.

⁴⁰ *Id.*, p. 50, para. 177.

⁴¹ *Id.*, p. 50, para. 179

transvestites or transgender persons, and often involve detention, during which they are subjected to verbal and physical abuse by both state and non-state actors.⁴²

A particularly egregious instance of forced relocation of members of the LGBT community involved the displacement of approximately 100 sex workers in San Pedro Sula, the nation's second largest city and industrial center. The sex workers, who had been working for several years along the Boulevard Morazán, were not committing a crime, as prostitution is not a crime under the Honduran Penal Code.⁴³ In 2002, however, San Pedro Sula authorities decided to convert the street into a tourist attraction. In order to “clean” the area so it would be more attractive to tourists, the local government unilaterally chose to relocate the workers to El Tamarindo, an area near the railways.⁴⁴ No one in the LGBT community was consulted regarding the displacement, despite the fact that many of the relocated individuals were members of gay rights organizations. After the decision was made public, affected individuals and other members of the LGBT community objected; their objections were met with violence from state and non-state parties. This government-mandated deportation resulted in the loss of the sex workers' liberty, as they could no longer exercise independent choice regarding their day-to-day life and activities. The sex workers were forcibly moved from one area to another without their consent, such that they were deprived of their liberty through an arbitrary procedure that was not established by Honduran law.

In addition, selective and discriminatory enforcement of laws and ordinances against LGBT individuals often results in a violation of Article 9. As noted above, several Honduran laws lend themselves to arbitrary enforcement against the LGBT community. In particular, the Coexistence Law effectively gives police officers the authority to selectively arrest and harass transsexual and other effeminate-looking individuals.

LGBT individuals who are in need of protection are commonly neglected by the government. As the lack of serious investigations on the Yañéz and Hernandez murders, among others, illustrate, members of the LGBT community are often placed in harm's way with few if any avenues of recourse available due to government insufficient government action.

Article 10 (Treatment of Individuals Deprived of Their Liberty)

As already discussed, LGBT individuals are routinely victims of police brutality. Despite the rationales for their arrest or detention—usually unwarranted—LGBT detainees and prisoners are routinely harassed and abused by state agents. The violations enumerated under Article 7 also violate this Article, where they involve abusive treatment of prisoners by guards, police officers and other state officials. For example, many of the reports compiled by Cattrachas document cases where LGBT individuals who were detained for arbitrary and discriminatory reasons in and of themselves, were then subjected to beatings and abuse by police officers and prison guards.

⁴² *Id.*, pp. 49 – 50.

⁴³ Penal Code, Decreto No. 144-1983 [NEED BETTER CITE]. “Transvestites and Gay Men Again Threatened with Expulsion from City: Act Now to Protect Freedom of Movement,” IGLHRC, November 19, 2002, *available at* <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=29>.

⁴⁴ *Id.*

Article 22 (Freedom of Association)

In Honduras, any NGO must go through a “registration” process in order to be granted legal status. This process requires that the NGO submit an application of registration to the Ministry of the Interior.⁴⁵ The NGO can also submit letters of support for other NGOs or government departments. If the NGO’s application is approved, then it is granted legal status as a recognized member of civil society. As a result, a registered NGO can acquire and own property, pay salaries, and take part in legal disputes. Registration “also gives such organizations (and their constituencies) a place and face in society as a whole; it gives their membership the power to enjoy their full status as citizens, their full belonging in their communities.”⁴⁶ LGBT organizations first began applying for legal registration in the early 1990s, but their applications were systematically denied by the Ministry of Interior until three organizations were registered in 2004. The constant denials negatively impacted the ability of these organizations to effectively address human rights issues important to the LGBT community. In addition, the government’s refusal to grant legal status to these groups represents a violation of the right of homosexual and transgender persons to freedom of association and assembly. Homosexuals and transvestites were forced to seek protection as individuals rather than as an organized group, making them more vulnerable and lessening their lobbying power.

On April 4, 2000, the LGBT organization Grupo Prisma submitted a request for official registration and approval of the statutes of the organization to the Ministry of the Interior and Justice, as required by law. On August 2, 2000 a decision was issued, denying the application. The official reason was that “the Statutes [of the organization] breach morality, public order, and proper behavior.”⁴⁷

In 2004 the Ministry of the Interior and Justice granted official registration to three LGBT groups in San Pedro Sula: Comunidad Gay Sampedrana para la Salud Integral, Kukulcan, and Colectivo Violeta. The recognition of these groups is an important step forward, but does not appear to have signaled a policy change.

What’s more, there has been significant backlash in response. The decision was strongly condemned by those who see LGBT activists as a danger to society. Discrimination against them continues with little or no acknowledgement of their positive work on behalf of human rights. MP Ramon Villeda Bermudez submitted a request to require the Minister of the Interior and Justice, Ramon Hernandez Alcerro, to provide Parliament an explanation for the grant of legal registration to the three groups, which Villeda Bermudez said were against the law, public order, and good customs.⁴⁸ Hernandez Alcerro defended the decision to grant legal recognition. He emphasized that the groups had met all of the requirements for legal status, that the right to freedom of association gives them the right to be legally recognized, and that the groups do

⁴⁵ The Constitution guarantees freedom of association but puts the authority to grant legal status in the hands of the executive. A new draft NGO law is currently circulating (dated April 2006). International Center for Not-For-Profit Law, www.icnl.org.

⁴⁶ “Support Legal Registration for Gay, Lesbian and Transgender Organizations,” IGLHRC, September 15, 2004 (hereafter, IGLHRC, Support Legal Registration”), *available at*: <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=520>.

⁴⁷ Amnesty Int’l Honduras Report 2003, p.4

⁴⁸ IGLHRC, Support Legal Registration

important work in the fight against AIDS.⁴⁹ In response, religious organizations and other groups sponsored demonstrations and began a campaign against homosexual marriage.⁵⁰ As discussed below, this led to a Constitutional amendment banning same-sex marriage and adoption by same-sex couples.

In addition, in January 2004, invoking Article 54 of the Coexistence Law, the mayor of San Pedro Sula authorized a raid on Boyz, the city's only gay bar. Twelve people, including Jorge Flores and several staff members from Comunidad Gay Sampedrana were arrested and held for 24 hours before being released. The bar was closed down, and has not reopened.

Article 23 (Family Life)

The status of same-sex couples under the ICCPR is not completely clear. In *Joslin v. New Zealand*,⁵¹ the Human Rights Committee found that the refusal of a state to allow same-sex couples to marry did not violate Article 23. Two Committee members, however, argued that such a denial could form the basis for a discrimination claim under Article 26. In *Young v. Australia*⁵² the failure to grant *de facto* same-sex couples benefits that were available to *de facto* opposite-sex couple has been considered a violation of Article 26. Within this context, this decision may have implications relating to the protection of family life under Article 23.

In 2004, members of Honduran evangelical groups responded vehemently to the government's formal registration of the three LGBT associations. Although some members of the government defended the registrations, others aligned with the growing fundamentalist movement. This led to Congressman Jose Celin Discua sponsoring a proposed amendment to the Honduran Constitution that would ban marriage and adoption by same-sex couples. This amendment passed unanimously, and the Constitution was officially amended in January 2005.⁵³ This amendment is particularly detrimental for LGBT individuals, as it could in fact promote different treatment between unmarried same-sex and opposite-sex couples.

Article 24 (Special Protection of Children)

Discrimination and other offenses against LGBT youth can result in violations of multiple Articles of the ICCPR. For example, Pedro Humberto Romero, a 15 year old *travesti* known as "la Macarena", was found dead on July 8, 2004 in San Pedro Sula. He had been shot 23 times. His hands and feet were tied with shoelaces and he had 3rd degree burns over 90% of his body.⁵⁴ There was no serious investigation of Romero's murder. His death illustrates the Honduran government's failure to protect LGBT youth under Article 24, as well as a violation of Article 6 in this specific case.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Communication No. 901/1999.

⁵² In this case, the Human Rights Committee held that the government may not refuse to grant specific pension benefits to homosexual couples when the same benefits were authorized for heterosexual couples. Communication No. 941/2000.

⁵³ Reed Johnson, "Honduras Measure to Ban Same-Sex Marriage Mobilizes Rights Groups Sponsor of the proposal, backed by a burgeoning evangelical movement, slams acceptance of gay unions in parts of the U.S. and Europe," *Los Angeles Times*, January 19, 2005.

⁵⁴ "'Gay'" menor de edad era el ejecutado de 23 balazos, *La Tribuna*, July 8, 2004.

Concluding Notes

- LGBT individuals face discrimination in the workplace, where there are no non-discrimination laws to protect them. They are often denied employment or promotion, and are subjected to harassment by employers and coworkers. Because the non-discrimination laws do not include sexual orientation or gender identity as a prohibited basis, LGBT victims generally lack redress for the wrongs suffered in the workplace.
- Those with HIV/AIDS are often particularly victimized by discrimination in access to employment, education, and health care.
- The criminal justice system discriminates against the LGBT community and fails to protect them. The deaths of LGBT individuals often go uninvestigated and usually remain unsolved. The perpetrators of such crimes go unpunished.
- The repeated violations of the human rights of members of the LGBT community by the Honduran police must be addressed. Police officers regularly target LGTBI individuals for arrest and abuse. The police officers involved in such abuses must be identified, and once identified, must be brought to justice.
- LGBT organizations are stigmatized by religious organizations and politicians who consider them a danger to society and ignore their valuable contribution to human rights work.
- The hostility directed against the LGBT community following the legal recognition of three LGBT NGOs has resulted in laws which discriminate on the basis of sexual orientation and gender identity, either de jure or de facto. The amendment to the constitution banning gay marriage and adoption by same sex couples discriminates on its face against LGBT individuals. The Coexistence Law, while not discriminatory on its face, is used to victimize people identified as homosexual or transvestite.

Proposed Questions for the Government Delegation

- How will the government assure that the Coexistence law is not discriminatorily used to target LGBT individuals for harassment and abuse?
- How does the Government intend to act in order to secure the rights of LGBT individuals and communities against discrimination and severe abuses in compliance with the Covenant and what redress will the government provide to those individuals whose rights have been violated by the police?
- Why has the government refrained from engaging in a thorough and complete investigation and prosecution of crimes committed against LGBT individuals?

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- How will the government intend to address the issue of discrimination faced by gay, lesbian and transgender individuals, in particular in the field of employment and occupation ?
- What steps are being taken in the fight against HIV and AIDS, particularly with respect to the gay community, where the epidemic is especially prevalent?
- How will the Government ensure that the marriage amendment to the Honduran constitution will not cause difference in treatment between *de facto* same-sex and opposite-sex couples?
- How will the government ensure that minors, the most vulnerable members of the LGBT community, are protected against unwarranted abuse and discrimination?