

SHADOW REPORT SUBMITTED BEFORE THE COMMITTEE AGAINST TORTURE REVIEW OF GUATEMALA¹

The present report is presented to the Committee, to follow-up to the periodic report that is presented by the State of Guatemala in 2013 by the Legal Network² and its Observatory in Human Rights, HIV and MARPS.

The Legal Network and its Observatory in Human Rights, HIV and MARPS, is a civil society multiparty space, national representative, that includes groups of people living with HIV, Lesbian, Gay Bisexual and Transgender people (LGBT), sex workers, grass-root level groups, individuals and the organizations that works on HIV, HIV advanced and human rights, with the purpose of fight for the protection, promotion and defense of their Human Rights; among its goals is to advocate for the reduction of stigma, discrimination, criminalization and victimization of HIV people and the Most-at-risk Populations, with inclusive actions before the State, political and private spaces nationwide.

With this document, we are looking forward to report to the Committee about the inexistence of legal and administrative dispositions, the absence of dialogue spaces between the State and the Civil Society to provide protection and attention to Lesbians, Gays, Bisexuals and Transgender in Guatemala.

In the reports and the questionnaire presented to the Committee by the State of Guatemala, it is evident the complete absence of information about legal and institutional dispositions and of public policies that protects, prevents and sanction the human rights violations of the LGBT people. This void has generated a high level of vulnerability and impunity of these acts.

Guatemala had been informed about this situation through reports from the Office of the High Commissioner of the United Nations for Human Rights in Guatemala, about mistreatment in the health system³, the discrimination and violence that the human rights defenders⁴ face. There are recommendations made in the Universal Periodic Review about the need to fight against the lynching and murders⁵, end the impunity of the assaults reported, sensitize the law forces and

¹ All the translations have been made by the authors.

² The Legal Network and its Observatory in Human Rights, HIV and MARPS, is formed by the next organizations, that works in this themes, from diferent departments of the Republic: Asociación Alianza Nacional de Grupos de Personas que viven con VIH o Sida de Guatemala, Asociación Amistad Positiva, Asociación de Investigación, Desarrollo y Educación Integral – IDEI-, Asociación de la iniciativa por la Diversidad Sexual de Occidente- IDSO-, Asociación de Salud Integral –ASI-, Asociación de Servicios Comunitarios de Salud -ASECSA-, Asociación Gente Nueva, Asociación Gente Positiva, Asociación Hospicio San José, Asociación Vida, Centro de Desarrollo Comunitario Integral, CODESIDA, Colectivo de Amigos contra el Sida, Fundación Fernando Iturbide, Fundación Marco Antonio, Grupo de Apoyo de Amigos Solidarios, Grupo de Auto apoyo ASI es +, Grupo de Auto Apoyo Gente Unida, Grupo de Auto Apoyo Paso a Paso, Grupo de Auto Apoyo Renovación Positiva, Asociación Lambda, Organización Trans Reinas de la Noche –OTRANS-, Organización de Mujeres en Superación –OMES-, Pastoral Social VIH, Programa para la prevención de las ITS, VIH y Sida de la Unidad de Salud de la USAC, Proyecto Vida, Red Nacional de la Diversidad Sexual –REDNADS-, Red Suroccidente, Red VIH Petén, Red Multicultural de Mujeres Trans –REDMMUTRANS-.

³ Activities report from the Office of the High Commissioner of the United Nations for Human Rights. 2010. Page 17

⁴ Activities report from the Office of the High Commissioner of the United Nations for Human Rights. 2011. Page 10

⁵ A/HRC/8/38. Report of the results from the work group about the Periodic Universal Report from Guatemala. 2008. Switzerland recommendation, number 16.

judges⁶, approve new measures to end the aggressions to human right defenders, train law enforcement officials and judicial authorities.⁷ In reviewing these recommendations in the reviewing session in October 2012, the State did not report any advance or information about them. Although, in the written answers to the questions formulated in the second cycle, expressed its viability to attend the necessity to open the dialog between the different society sectors to guaranty the LGBT⁸ people human rights and manifested that recognize and respect all the personas regardless their identity or sexual orientation⁹.

The Human Rights Committee of the United Nations, expressed its concern for the discrimination and violence that the LGBT people are victim, and urged the State to clearly and officially express its intolerance to this ways of social stigma¹⁰.

Despite the political declarations given by Guatemala, until the date there is not any advance, approach or political will that effectively respond and in an comprehensive way to the LGBT people needs.

Here are argued the legal and institutional emptiness from the Guatemalan State related to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment:

Article 1

In spite of that in this article has been argued that the dispositions, affect not only the torture acts, but it includes the ill-treatments related in article 16, the State has not advanced in the revision, analysis and adapting the legislation, attention and security protocols in the deprivation of liberty centers, for the benefit of LGBT people deprived of liberty, as contained in the Committee's General Comment number 2.

This gap has led to the commission of abuses against transgender women, for example in Quetzaltenango (north-western part of the country), took place the arrest of some transgender women that practice paid sexual activities. After complains and allegations from the neighbors, they were arrested, transported in a van, where social media had the opportunity to photographed them, and after they were taken to a detention place, locked out with men, who physically and sexually abused them. After this incident, they presented the allegation but they were not attended and these acts remain in the impunity.

In the same city, an activist trans women from the organization OTRANS, in January 2011, who traveled to collect information from these acts, while walking on the central park was apprehended without any legal reason, imprisoned, abused by police officers, thrown to the floor in a provisional detention center, disposed of her identity document as a human rights defender, verbally and physically abuse and finally her hair was cut against her will.

⁶ Op. Cit. Slovenia Recommendation number 35

⁷ Op. Cit. Czech Republic, number 36

⁸ Question written response, formulated by Norway number 3. Available in:
<http://www.copredek.gob.gt/index.php?showPage=2681>

⁹ Op. Cit. written question formulated by Norway, number 4.

¹⁰ CCPR/C/GTM/CO/3 Observation number 11.

It is clear, that there is a general lack of framework of human rights of the LGBT communities in the prison system, which generates acts of discrimination and violence of their rights. Besides, for the absence of protocols that attends these issues, in the deprivation of liberty centers don't exist proper spaces to receive transgender or transsexual people, who are locked with other men, without any protection, which exposure them to sexual violence and physical violence in hands of other prisoners, in addition of the bad treats from the Prison system authorities, who obligates them to behave as their biological sex, and not as their gender identity.

Article 2

Guatemala those not count with any type of disposition that prohibits the discriminatory acts, nor prevent torture acts, or abuses, based on prejudice for discrimination based on sexual orientation or gender identity to people that are under their jurisdiction. Despite Guatemala has the Discrimination crime typified in its Criminal Code¹¹, its writing is wide and does not include between the explicitly prohibited motivations either the sexual orientation nor gender identity. This circumstance has complicated the prosecution of discriminatory attitudes. This gap has left a wide margin of maneuver and impunity for human rights violations that people LGBT suffer, under the justification that many of the attitudes and discriminatory actions cannot be classified in a penal type and therefore can't be prosecuted by the attorneys because they can't accept a complain.

In the Criminal Code is typified the crime of torture¹². However its wording does not allow to frame all the offenses that takes place in Guatemala, and that in compliance to the international instruments are considered as torture. However, an unconstitutionality¹³ action was filed against it, and was declared that its wording must be adjusted to the international treaties related; actually it remains with the same wording.

Article 10

It has not been possible to verify if the officials and security guards from the Prison System have received any training on these topics. The Prison Study School has not included the topic, taught lessons nor complete courses, do not have training materials that attend the specificities of LGBT

¹¹ Penal Code. Decree 17-73. Article 202 bis. Discrimination is understood as any distinction, exclusion, restriction or preference based on gender, race, ethnicity, language, age, religion, economic status, illness, disability, marital status, or any other reason, reasons or circumstances, which prevents or hinders a person, group of persons or associations, the exercise of a legally established including customary law or customs, in accordance with the politic constitution of the republic and the human rights international treaties.

Who by action or omission incurred in the described conduct in the preceding paragraph, will be punished with prison of one to three years and a fine of five hundred to three thousand quetzales.

The penalty will be increased by one-third: A) when the reason of the discrimination is based on language, cultural or ethnic. B) for whom any form spreads, support or incite discriminatory ideas. C) When the act is committed by a government employee or civil servant in the performance of their duties. D) When the act is committed by any particular in the performance of public service.

¹² Penal Code. Decree 17-73. Article 201 bis. Torture.

¹³ Because of the action of general partial unconstitutionality filed, identify with the file number 1822-2011 y sentence from the Constitutional Court, from July 17th 2012, the article 201 bis form the Penal Code must include: From de UN Convention: "of punish it" when it refers that the torture are serious suffering, physically or mentally, in order to obtain from it o by a third person information or a confession, or "to punish it" for an act that has committed. Also from that Convention must include "or bye any reason based on any type of discrimination". From the Inter-American Human Rights Commission, the article must include –the torture are suffering- "bye any other purpose. It will be understood also as torture the application over a person with methods to obliterate the personality from the victim or to decrease the physical and mental ability, although physical pain or physique anguish has not been caused".

people concerning the treatment, stigma and discrimination they face while are deprived of their liberty. Any neither rule, nor financially, technical and human resources supported programs have been installed to give an integral attention to these people. In the rehabilitation area there is not either permanent or sustainable program in charge of promoting a culture of respect with regard the LGBT people from the other inmates.

This void, on training and professionalization processes, exist either in the Direction of the Prison System and the Directions of National Civil Police and the General Direction on Migrations, all of them within the Interior Ministry, as well as in any other Executive Branch institutions.

Based on information from the State institutions, obtained via Public Information Access Law¹⁴, where the Prison System states that currently exists a comprehensive plan of attention for LGBT inmates, there has not been possible to verify its implementation, and it has been documented some violations of their human rights. This is a common pattern observed in different State Institutions where there are statements on how LGBT human rights are promoted and respected but any concrete action is taken to attend their needs.

Article 13

Due to the lack of trust in state institutions, the fear of reprisals, the lack of sensitivity of the staff in charge of receive complaints and the impunity in the few cases presented in the past, LGBT people had not filed denounces nor complaints before authorities. These have made more complicated to document and demonstrate the problematic and compile the necessary evidence to promote with a higher coercion power the state response concerning security issues for LGBT people.

Besides, discriminatory attitudes from Security Officers in prisons, of whom it has been reported that use the threat of physical punishment or solitary confinement as a mean to limit the capacity of submit complaints by LGBT people.

In 2012, the Legal Network and its Observatory documented that the Prison System, in a clear discriminatory action, violating the human rights of the transgender inmates, issued a circular¹⁵ ordering to cut their hair to avoid possible escapes, based on a new from the 70s in the USA. When the investigation began, the transgender inmates reported threats by the Prison System authorities about their communication with the Legal Network Lawyers. These threats where aimed to stop the legal process and communicate exclusively with the Prison System Authorities and cease the complaints and judicial claims to repeal the circular.

The Ombudsman Office, under pressure of the Legal Network and its Observatory, has tried to document the situation within the prison. However, due to the lack of specific knowledge on the LGBT rights and the lack of investigation skills, it has been not able to report the violations of human rights in the prisons either individual cases nor patterns of abuses.

¹⁴ Public Information Unit from the Interior Ministry. Resolution Number 582. Document Number 182-2012.RG/grrg.Ref.Coord. De Rehab Social. July 13th 2012.

¹⁵ Circular **281-2012/EFA-lbr. October/3/2012.** "(...) the homosexual inmates must wear at any time the dressing coherent to their natural gender (homosexual men as men with their hair cut, lesbian women as women), coherently, therefore must be often supervised the performance of these circular, to avoid any incident that could happen while the visit hours. Original Spanish Version: "(...) los privados de libertad homosexuales deberán vestir en todo momento la vestimenta según su género natural (hombres homosexuales como hombres con el cabello recortado, mujeres lesbianas como mujeres), conforme corresponde, debiendo supervisar constantemente, el cumplimiento a dicha normativa, para evitar incidentes que pudieran manifestarse aprovechando el horario de visitas"

Article 16

Based on the information that has been documented by the Legal Network, it can be concluded that the abuses faced by LGBT people more often can be described as cruel, inhuman and degrading treatments. These covers an array from discriminatory attitudes of the police officers who chase after them in the public spaces assuming they are committing crimes, using verbal and physical abuses, sending them to prison to be ill-treated by prison guards and security officers in the same way.

Once admitted, transgender people are verbal and emotionally abused by the guards in charge of the admission. During physical search, they are requested to exhibit their genitals to verify their “true gender” (in male-to-female persons), do not receive proper mental assistance and no specific medical assistance such access to hormone treatment. In average terms, there is no security measures concerning the vulnerability derived from their gender identity for example they are imprisoned with other male prisoners who sexually abuse them sometimes.

Prison System does not have psychologists who understand the impacts of physical and verbal violence of discrimination based on sexual orientation and gender identity.

The circular mention in the previous part, is a clear evidence of the prevailing prejudices and ignorance within the Prison System that promote the prejudices in the Directors of Prisons and security officers. As a result of the legal actions promoted in this case, the Ombudsman issued a Resolution on January 16th, in the file EXP.ORD.GUA.7875-2012/DE, where he points the Prison System Officers responsible for cutting the hair of the transgender women, orders the suspension of the Circular and recommends to develop trainings to increase the knowledge and awareness of the Direction officers and prevent future violations.

It must be highlighted that in this Resolution, the Ombudsman Office included a case of another transgender whose rights were violated by the Prison System officials, as it follows: *“On the other hand, officials of the Ombudsman Office held visits to different prisons throughout the country, proceedings from which it must be stressed out the interview with the inmate xxx-¹⁶ in the Department of Izabal (north-eastern part of the country)who expressed that the former director of the Prison constantly threatened her with cutting her hair and forced her to dress and speak as a man, humiliating her inclusive in front of other inmates, who at the time harassed him (sic.), and disdainfully”.*

However, there is no evidence on whether any action was taken after the knowledge of this acts, to sanction the responsible in this case, to prevent new abuses and to repair the damaged inflicted to the victim. Furthermore, there are no reports on how the Resolution of the Ombudsman was implemented and how it has been followed-up.

Is highly important to stress that this is the first time that an official record contains physical evidence of how LGBT people rights are violated and the ill-treatment they constantly suffer both in Prisons are outside of them.

¹⁶ Name of the victim has been omitted for her personal security.

Finally, there have been documented cases of school violence against LGBT people. In these cases are seen discriminatory actions that goes from verbal to physical abuse, without any concrete measure by the state institutions. Recently, the Education Ministry issued a Circular to prevent this phenomenon targeted to bullying but omitting the hatred actions based on sexual orientation and gender identity despite they were inspired by the world report on school violence of Paulo Sergio Pinheiro¹⁷ that actually includes it among other motivations. This void seems as an acquiescence of the state for such violence and it has lead in some case to boys and girls to abandon school and in some cases are pushed to sexual commerce activities.

Recommendations:

Based on the evidence presented in this report, the Legal Network and its observatory of human rights, HIV and MARPS, recommend to the Committee against Torture to include in his concluding observations to Guatemala, the following:

- 1. Issue the legal and administrative framework to prohibit the acts of verbal and physical violence based on sexual orientation and gender identity, in order to prevent new acts. At the same time, investigate, identify and punish the offenders and repair the victims of torture, cruel, inhuman and degrading treatments.**
- 2. Develop sustainable and comprehensive training process inside the institutions in charge of protect and respect the right to life of LGBT people, especially the Law enforcement officials, judiciary and Prison System staff.**
- 3. Start campaigns to raise public awareness about the importance of respect the LGBT human rights, framing them in the universal respect for human rights and the fight against discrimination. These campaigns must be targeted to all the state institutions.**
- 4. Fully involve the LGBT civil society organization, through institutional spaces, to the design and implementation process of all these recommendations.**

NOTE: See document attached at the bottom of this report

¹⁷ Pinheiro, Sergio Paulo. Independent Expert of the Secretary-General of the United Nations on violence against children. World Report on violence against boys and girls. Available on: <http://www.observatoriodelainfancia.msps.es/productos/docs/informeMundialSobreViolencia.pdf>



Dirección General
del Sistema Penitenciario

Pavón

SUBDIRECCION OPERATIVA

Oficio Circular No. 261-2012/EFA-Ibr

Guatemala, 03 de octubre de 2012.

Directores (as) y/o Sub-Directores (as)
Centros de Detención
Dirección General del Sistema Penitenciario
Preséntes.

Señores Directores(as) y/o Subdirectores(as):

Sírvase tomar nota, por antecedentes relacionados a fugas a partir de la presente fecha los privados de libertad homosexuales deberán vestir en todo momento la vestimenta según su género natural (hombres homosexuales como hombres con el cabello recortado, mujeres lesbianas como mujeres), conforme corresponde, debiendo supervisar constantemente, al cumplimiento a dicha normativa, para evitar incidentes que pudieran manifestarse aprovechando el horario de visitas.

Atentamente.

[Handwritten signature]

GUATEMALA MODELO DE REHABILITACION PENITENCIARIA
ALCAIDIA
21-10-12
23.00

Cc: Archivo

7a. Calle 10-54 zona 1, Ciudad de Guatemala, Teléfono: 2410 - 8000

www.guatemala.gob.gt

YAHOO! NOTICIAS

Se solicita

¿Está buscando un servicio de seguridad o un seguro de vida? Consulte aquí los servicios de seguros de vida y de salud que ofrece la Compañía de Seguros de Vida de Guatemala.

PDVEX

Handwritten signature: Fabrice Wolford

Yahoo! Ahora con amigos

Se unen a tus amigos y más. Así es como se conectan tus amigos con los amigos de tus amigos. ¡Publica tu perfil ahora!

Entra en Facebook

Dwight Worker, el hombre que escapó de la cárcel vestido de mujer

Por Teresa Castellanos | Última actualización: 10 de febrero de 2011

Los carceleros le hacían tropezar. No con pintañabos y peluca se podría hacer a la foto de mujer que había en el pasé que le aseguraba la libertad. Pero en aquel momento de 1973, era la única forma que tenía Dwight Worker de hacer algo que hasta entonces solo había logrado Panchito Villa: escapar de la prisión Lecumberri, una de las más duras de México.



Dwight Worker en la redacción hecha por National Geographic

Worker, un estadounidense, pasó a la historia por su descabellada fuga de esa cárcel, objeto ahora de un capítulo de la serie documental *Lo más increíble*, de National Geographic. En él, se cuenta cómo había ido a México para traficar con cocaína. Su plan era fingir que se había herido el hombro y llevar la droga a Estados Unidos dentro de un cabestrillo que él mismo había diseñado. No funcionó. Fue detenido, procesado y condenado a pasar varios años en Lecumberri.

[Relacionado: Una mujer hace el record de latencia en el interior de un cuerpo]

Le esperaba una incógnita. "Durante los dos años que pasé a cuatro veces", recuerda hoy. Podía haber evitado parte de ello si quisiera que no podía sino estar un perpetuo confiado con los guardias. "No afirmo", fue todo tan desafiante que me era imposible no defenderme.

Una de las cosas que no contaban era con que el amor le fuera a sacar de allí. En un momento de esos dos años, Worker conoció a Barbara White, una estadounidense que soñaba a visitar a otro preso. La coincidencia se enamoraron y empezaron a planear una vida fuera de la cárcel. Por el pequeño detalle de salir de ella.

[Relacionado: La peligrosa banda de rubias delictivas]

Así que trazaron un plan tan descabellado que, o bien era brillante o bien iba a terminar en tragedia. Barbara le fue dando, prenda por prenda, una disfraz completo de mujer: peluca, tecones, faldita, pintañabos... Y así consiguió hacerse pasar por una de las mujeres que visitaban a los prisioneros.



la redacción de National Geographic (RAW TV)

El plan tenía sus riesgos. Si no conseguía engañar a los mismos guardias que le visitan la cara (sin afeitarse, eso sí) todos los días, se enfrentaba a un trato peor de lo que le tenían acostumbrado. "En México no es legal escapar de prisión a menos que le causas daños a otra persona", cuenta Worker. "Pero en una cárcel porque si los guardias me hubieran capturado, me hubieran... como decirlo? Tratado como una mujer antes de matarme".

[Relacionado: La policía encuentra a un narcotraficante italiano posando con Obama en Facebook]

Fue la fealdad. Con unos pecos de hierro, el futuro ex preso se las apañó para salir de allí y, como si nada, tomar un taxi. Se reunió con White en un punto predeterminado, se quitó la ropa de mujer y juntos se subieron a un tren rumbo a la frontera con Tijuana (California). De ahí, la pareja huyó a Indiana.



México nunca pidió la extradición del preso fugado, por eso hoy vive en...
Más sobre...