



Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report

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Prepared by:

Letra S, Sida, Cultura y Vida Cotidiana, A.C.

Center for International Human Rights
of Northwestern University School of Law

Heartland Alliance for Human Needs & Human Rights,
Global Initiative for Sexuality and Human Rights

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I. Introduction

This shadow report is submitted to the Human Rights Committee (“Committee”) by Letra S, Sida, Cultura y Vida Cotidiana, A.C. (“Letra S”),¹ the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights,² in anticipation of the Committee’s adoption at its 111th Session of the List of Issues for the periodic review of Mexico’s compliance with the International Covenant on Civil and Political Rights (“Covenant”).³

Mexico is to be applauded for having taken certain positive steps in recent years to amend its constitution and enact federal legislation prohibiting discrimination on the basis of sexual orientation. Mexico City (Federal District), in particular, has taken a leadership role in enacting laws and adopting measures to combat discrimination and hate crimes on the basis of sexual orientation and gender identity. Additionally, Mexico’s National Supreme Court of Justice merits recognition for rulings it has issued in certain cases challenging discrimination on the basis of sexual orientation.

But despite these commendable measures, homophobia and transphobia remain prevalent in Mexico, and discrimination and hate crimes on the basis of sexual orientation and gender identity remain all too common. Mexico’s response has, in certain important respects, fallen short of its obligation to respect and ensure all Covenant rights to all individuals, including LGBTI individuals.

This report, therefore, is intended to direct the Committee’s attention to serious and ongoing violations of the Covenant rights of LGBTI individuals in Mexico, and to ask that these violations be addressed in the List of Issues adopted for Mexico’s upcoming periodic review. In particular, this report will address the following violations of Covenant rights:

¹ Letra S, Sida, Cultura y Vida Cotidiana, A.C. (“Letra S”) is a Mexican non-profit organization dedicated to the creation of a society with greater tolerance and respect for the diverse expressions of sexuality. Letra S works to promote human rights for sexual minorities and to raise awareness about HIV/AIDS and sexual health.

² This report was authored by Brittany Bowman (JD/LLM in International Human Rights 2016, Northwestern University School of Law), Ning Ding (LLM in International Human Rights 2014, Northwestern University School of Law) and Professor Bridget Arimond of the Center for International Human Rights of Northwestern University School of Law. The report was prepared in collaboration with Letra S and was guided by Stefano Fabeni, Managing Director of GIHSR and Marcelo Ferreyra, Latin America and Caribbean Coordinator of GISHR.

³ International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171 (“Covenant”).

1. Failure to prevent and to appropriately investigate and prosecute killings of LGBTI individuals because of their sexuality, including killings of LGBTI human rights defenders (violation of Articles 2 and 6). Letra S has compiled a register of more than 250 homicides of LGBTI individuals in the years 2010-2013, including homicides of LGBTI human rights defenders. The full extent of hate crimes, including murder, against LGBTI individuals is unknown, because police and prosecutorial officials frequently do not categorize these crimes as hate crimes. Often, homicides based on the victims' sexuality are mischaracterized as "crimes of passion." As a consequence of their failure to treat these crimes as hate crimes, the authorities frequently fail to properly investigate, prosecute, and punish these homicides.

Issue: What steps will Mexico take (a) to prevent killings of LGBTI individuals because of their sexuality or their political activism as human rights defenders, (b) to develop appropriate protocols for the investigation and prosecution of such crimes, and (c) to maintain records of all such killings and the results of the ensuing investigations and prosecutions?

2. Failure to protect school children from homophobic bullying (violation of Articles 2, 7, 9, 17, 24 and 26). Students in Mexican schools continue to experience homophobic bullying, including insults, taunts, and even assaults on the basis of sexual orientation and gender identity. As will be discussed more fully below, the results of a 2012 national survey reveal that 67% of survey respondents reported having been victims of homophobic bullying in schools, particularly at the primary (grades 1-6) and middle school (grades 7-9) levels. Incidents of such bullying have been reported as recently as 2014.

Issue: What steps will Mexico take to protect students from being bullied due to their sexual orientation or gender identity? In particular, what steps will Mexico take to ensure that all school administrators and teachers (a) create a climate of respect for sexual minorities, (b) firmly prohibit any form of bullying, and (c) take prompt and effective measures, in the event of bullying, to hold perpetrators accountable and provide appropriate compensation to victims?

3. Prohibition of same-sex marriage (violation of Articles 2, 23, 24 and 26). Mexico City (D.F.) is the only jurisdiction within Mexico that has amended its laws to allow same-sex couples to marry on the same basis as opposite-sex couples. Additionally, while the Federal Civil Code of Mexico does not explicitly define marriage as a union between a man and a woman, the pertinent marriage articles use the words "husband and wife" and "man and woman" to describe spouses.

Issue: What steps will Mexico take to ensure that same-sex couples are allowed to marry on the same basis as opposite-sex couples throughout Mexico? Will Mexico amend its Federal Civil Code to recognize marriage of same-sex couples?

4. Discrimination in social security benefits for same-sex married couples (violation of Articles 2 and 26). Although the Mexican Social Security Institute (IMSS) issued a press release on 17 February 2014 stating that it would extend social security benefits to same-sex married couples, in practice, same-sex married couples continue to experience difficulties in

registering their spouses for social security benefits. The same difficulties are encountered with respect to spousal benefits under programs administered by the Institute for Social Security and Services for State Workers (ISSSTE). The problems appear to stem from lack of appropriate training for IMSS and ISSSTE employees. An additional problem is that the IMSS law, as written, continues to describe eligibility for benefits using language applicable only to opposite-sex couples (i.e., “the wife of the insured man” or the “husband of the insured woman”), thus appearing to exclude benefits for same-sex couples.

Issue: What steps will Mexico take to revise the relevant laws and written policies, and to train and supervise all IMSS and ISSSTE staff, in order to ensure that same-sex married couples are allowed to register for social security spousal benefits on the same basis as opposite-sex married couples?

5. Failure to allow transgender individuals to conform their identity documents to their gender identity (violation of Articles 2 and 26). Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. The inability to do so outside Mexico City exposes transgender individuals to a heightened risk of discrimination and hate crimes.

Issue: What steps will Mexico take to amend its federal and state laws to ensure that, throughout the entire country, transgender individuals are able to conform their identity documents to their gender identity?

II. Positive Developments

In 2011, Mexico amended its Constitution to prohibit discrimination on the basis of “sexual preference.”⁴ Several years earlier, in 2003, Mexico passed the Federal Law to Prevent and Eliminate Discrimination. This law, which remains in force, prohibits public and private sector discrimination based on various characteristics including “sexual preference,” and it explicitly characterizes homophobia as a form of discrimination.⁵ The law established a National Council for the Prevention of Discrimination (CONAPRED) as a department within the Mexican Secretariat of the Interior, and assigned CONAPRED various responsibilities related to combatting discrimination. On March 21, 2014, Mexican President Enrique Peña Nieto signed a

⁴ Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, Article 1, Diario Oficial de la Federación [DO], 10 February 2014, *available at* <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. The Mexican Constitution and federal anti-discrimination law both use the terminology “sexual preference,” which was the terminology selected by Mexican LGBTI activists. This terminology is understood to have the same meaning as “sexual orientation,” which is more commonly used internationally.

⁵ Ley Federal Para Prevenir y Eliminar la Discriminación [Anti-discrimination Law], *as amended*, Articles 1, 2 and 4, Diario Oficial de la Federación [DO], 3 March 2014 (Mex.), *available at* <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>.

decree designating May 17th of every year as the “National Day for the Fight against Homophobia.”⁶

Within Mexico,⁷ Mexico City (Federal District) has taken the lead in enacting laws and taking measures to protect the rights of the LGBTI population. Mexico City has enacted general antidiscrimination legislation which goes beyond the federal law by prohibiting public and private sector discrimination on the basis of gender identity, as well as on the basis of sexual orientation.⁸ This law created an agency, the Council for the Prevention and Elimination of Discrimination in Mexico City (COPRED), which has the authority to take and resolve complaints of public and private sector discrimination that occur within the Federal District.⁹ The Criminal Code of the Federal District includes a hate crimes provision, under which crimes committed on the basis of the victim’s sexual orientation or gender identity are considered hate crimes.¹⁰ In 2004, Mexico City amended the Civil Code of the Federal District to allow transgender people to change the sex and name recorded on their birth certificates to conform to their gender identity.¹¹ In 2010, Mexico City again amended its Civil Code to allow same-sex marriage and adoption of children by same-sex couples.¹² In 2011, the government of the Federal District opened the Community Center on Sexual Diversity which has provided health and legal services to the LGBTI community.¹³ In 2012, the Federal District Attorney General issued a directive that provides instructions on effectively processing cases of crimes committed on the basis of the victim’s sexual orientation and gender identity.¹⁴

⁶ Decreto por el que se declara 17 de mayo, Día Nacional de la Lucha contra la Homofobia. Diario Oficial de la Federación [DO], 21 March 2014, *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=5337843&fecha=21/03/2014.

⁷ Mexico is a federal republic made up of thirty-one states and the Federal District (Mexico City).

⁸ Ley Para Prevenir y Eliminar La Discriminación del Distrito Federal, [Federal District Anti-Discrimination Law], *as amended*, Articles 1 and 5, Gaceta Oficial del Distrito Federal, 24 February 2011 (Mex.), *available at* <http://cgsservicios.df.gob.mx/prontuario/vigente/4119.pdf>.

⁹ *Id.* at Articles 33-37.

¹⁰ Código Penal Para el Distrito Federal [Federal District Criminal Code], *as amended*, Article 206, Gaceta Oficial Del Distrito Federal. 24 February 2014, *available at* <http://www.aldf.gob.mx/archivo-994197bf103f72d714726e94ce527125.pdf>.

¹¹ Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Article 135, Gaceta Oficial Del Distrito Federal, 5 April 2014, *available at* <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>; International Gay and Lesbian Human Rights Commission, *Mexico: Mexico City Amends Civil Code to Include Transgender Rights* (15 June 2004), *available at*, <http://iglhrc.org/content/mexico-mexico-city-amends-civil-code-include-transgender-rights>.

¹² Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Articles 146, 391, Gaceta Oficial Del Distrito Federal, 5 April 2014, *available at* <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>; NBC News, *Mexico City’s gay marriage law goes into effect* (4 March 2010), http://www.nbcnews.com/id/35714490/ns/world_news-americas/t/mexico-citys-gay-marriage-law-takes-effect/.

¹³ Press Release, Comisión de Derechos Humanos del Distrito Federal [Federal District Commission on Human Rights], La Ciudad de México Cuenta con el Primer Centro Comunitario de Atención a la Diversidad Sexual, (22 April 2011), *available at* <http://www.cd hdf.org.mx/index.php/boletines/1262-boletin-1372011>; Gerardo Suárez López, *Cumple un año Centro Comunitario de Atención a la Diversidad Sexual*, NotieSe (12 April 2012), *available at* http://www.notiese.org/notiese.php?ctn_id=5620.

¹⁴ Acuerdo A/007/2012 del Procurador General de Justicia del Distrito Federal Mediante el Cual se Emite el Protocolo de Actuación Para la Atención a las Personas de la Comunidad LGBTTI [Federal District Attorney

III. Violations of the Covenant

Notwithstanding the positive developments noted above, homophobic and transphobic attitudes remain prevalent in Mexico. Indeed, the pervasiveness of homophobia has been recognized by Mexico's own federal anti-discrimination agency, CONAPRED. According to CONAPRED, homophobia is deeply rooted in Mexican society and is prevalent in every area of life.¹⁵ These deeply rooted attitudes create an environment that leads to widespread and serious violations of the Covenant rights of LGBTI individuals.

A. Failure to prevent and to appropriately investigate and prosecute killings of LGBTI individuals because of their sexuality, including killings of LGBTI human rights defenders (violation of Articles 2 and 6).

An alarmingly high number of LGBTI individuals have been murdered in Mexico in recent years. Based on a review of news media and internet sites, Letra S has compiled a register identifying 288 LGBTI individuals murdered in Mexico from 2010 through 2013.¹⁶ Undoubtedly, this register underestimates the true number killed during this time period.

Transgender women are at particular risk of murder. According to a 2012 report by the NGO Centro de Apoyo a las Identidades Trans A.C., 126 transgender women were murdered in Mexico from 2010 through 2012.¹⁷

Prominent LGBTI human rights defenders have been among the people murdered. For example:

* Quetzalcoatl Leija Herrera, an LGBTI rights activist, was found beaten to death on May 3, 2011, near the central plaza in Chilpancingo.¹⁸

* Cristian Ivan Sanchez Venancio, another LGBTI human rights defender, was found stabbed to death in his home in Mexico City on July 23, 2011. He was a member of the Revolutionary Democratic Party's Coordinating Group for Sexual Diversity, and was an

General Directive Establishing Protocol for LGBTTI Community Affairs], Diario Oficial de La Federación [DO], 1 June 2012, available at <http://cgsservicios.df.gob.mx/prontuario/vigente/4811.pdf>.

¹⁵ Consejo Nacional para Prevenir la Discriminación (CONAPRED) [National Council for the Prevention of Discrimination], *El Combate a la Homofobia: Entre Avances y Desafíos* [Fighting Homophobia: From Advances to Challenges], at 2 (2012), available at

http://www.conapred.org.mx/index.php?contenido=documento&id=105&id_opcion=&op=215 [hereinafter CONAPRED, Fighting Homophobia].

¹⁶ *Crímenes de odio por homofobia 1995-2013*, Letra S (15 May 2014), available at <http://www.letraese.org.mx/2014/05/crimenes-de-odio-por-homofobia/>.

¹⁷ Centro de Apoyo a las Identidades Trans A.C., *Informe Crimenes de Mujeres Trans en México, Invisibilidad = Impunidad* (2012) at 4 (unpaginated), available at

http://api.ning.com/files/Kmd9nT1FlrI6KSQric9UFNzXuQCUFQuCpkUeqnT6J*D1Qhsg470*yiY3hcbriWcRV5MEsNvHkhwsVq7zmASMI61T8N5BrJsO/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf.

¹⁸ U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: Mexico, Section 6 (p. 30 in pdf version), available at <http://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm?dlid=186528#wrapper>.

organizer of Mexico City's annual Pride Parade.¹⁹

* Agnes Torres, a transgender woman and LGBTI rights activist, was found murdered in Puebla on March 10, 2012. A 28-year-old psychologist and educator, she was an ardent defender of LGBTI rights who had lobbied for legislative reform. When her body was found, she was stripped to her underwear, with her throat slashed and with burns marks across her body.²⁰

In some cases, the homophobic motivation for a murder is apparent. One such case is that of Roberto Zamudio Garcia, a 32-year-old gay man who was shot to death in January 2013 outside a Mexico City bar frequented by members of the gay community. When Mr. Zamudio stepped outside with a friend, two strangers drove by shouting homophobic slurs. When Mr. Zamudio's friend objected to the slurs, the two assailants got out of their car and one of them shot Mr. Zamudio to death.²¹

While in some cases it is more difficult to say with certainty that a particular murder was motivated by the victim's sexual orientation or gender identity, given the high number of murders of LGBTI individuals and the acknowledged prevalence of homophobia and transphobia in Mexico, every murder of a gay, lesbian, bisexual, transgender or intersex person should be investigated and prosecuted by the authorities as a potential hate crime.

At present, this is generally not done. Instead, all too often, murders of LGBTI individuals are dismissed – without proper evidence – as crimes of passion rather than hate crimes.²² And, although on occasion these murders have led to prosecutions, more often the crimes are never solved and no one is held accountable.²³

B. Homophobia, Transphobia and Discrimination (Violations of Articles 2 and 26)

A nationwide survey conducted by CONAPRED in late 2010 revealed that 50% of lesbians, gays, and bisexuals consider discrimination to be the main problem that they face, followed by lack of acceptance, insults and mockery.²⁴ Seventy percent of lesbians and gays believe that Mexico does not respect sexual diversity rights.²⁵ Forty three percent of gays believe that the police are intolerant.²⁶ A 2006 survey revealed HIV-related prejudice among medical staff in

¹⁹ *Id.*

²⁰ Press Release, Inter-American Commission on Human Rights, IACHR Condemns Murder of Human Rights Defender in Mexico (20 March 2012), *available at* https://www.oas.org/en/iachr/media_center/PReleases/2012/032.asp; Agnes Hernandez, *Mexican Transgender Activist, Brutally Murdered*, Huffington Post (15 March 2012), *available at* http://www.huffingtonpost.com/2012/03/15/agnes-hernandez-hate-crime-mexican-transgender-activist-brutally-murdered_n_1345867.html.

²¹ Raúl Macías, *Lo Vio Morir!*, La Prensa (26 January 2013), *available at* <http://www.oem.com.mx/laprensa/notas/n2858035.htm>.

²² Information provided to Letra S.

²³ *Id.*

²⁴ CONAPRED, *Fighting Homophobia*, *supra* note 15, at 1.

²⁵ *Id.*

²⁶ *Id.* at 7.

Mexico. Twenty three percent of the medical staff surveyed believe that homosexuality is the cause of HIV/AIDS in Mexico, and 66% believe that the test for detecting HIV should be obligatory for men who have sex with men.²⁷

Given the pervasiveness of homophobia and transphobia, it is not surprising that CONAPRED receives many complaints of discrimination against sexual minorities. For example, CONAPRED's 2012 report on discrimination against sexual minorities indicates that from January 1, 2011, through April 30, 2012, CONAPRED received a total of 273 complaints of discrimination on the basis of sexual orientation and gender identity.²⁸ Among these complaints, 237 were filed against private individuals or entities and 36 were filed against state actors.²⁹ The most frequently reported discriminatory acts in the private sector were: (1) homophobic opinions circulated in the media,³⁰ (2) employment discrimination (in hiring, promotion and retention) and workplace harassment (including verbal and physical aggression),³¹ and (3) denial of access to commercial establishments such as bars, restaurants, hotels, coffee shops, and malls.³² Within the public sector, **most complaints involved unequal treatment in healthcare, education, and employment.**³³ Individuals complained of (1) denial of medical attention because of manifesting or making their sexual orientation known, (2) refusal of social security enrollment to same-sex couples,³⁴ (3) mockery and homophobic comments from medical staff at government-run health centers, (4) physical and verbal mistreatment in public educational institutions, (5) dismissals from the workplace for being gay, and (6) verbal aggressions and harassment for being lesbian.

Neither CONAPRED's report nor its website indicates how many of the 273 cases have been resolved. It is difficult, therefore, to assess how effective this agency has been in investigating complaints and remedying discrimination against sexual minorities. In June of 2012, the Sexual Diversity Circuit (CIDISEX) filed a complaint against the federal government with the National Human Rights Commission (CNDH) in order to bring to light the government's lack of public policies designed to prevent, combat, and eradicate homophobia and CONAPRED's failure to develop various initiatives to protect vulnerable groups such as sexual minorities.³⁵ CIDISEX called for the creation of a Sexual Diversity Office with a significant budget in order to replicate the legal protections and rights that members of the LGBTI community enjoy in the Federal

²⁷ *Id.* at 11.

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ Including newspapers, radio, and the internet. *Id.* at 8.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 8-9.

³⁴ On February 17, 2014, the Mexican Social Security Institute (Instituto Mexicano de Seguro) issued a press release stating that it would extend benefits to same-sex couples in accordance with the Supreme Court of Justice's (SCJN) January 29, 2014 decision. Press Release, Instituto Mexicano de Seguro Social, Comunicado De Prensa No. 009 [Press Release No. 009] (17 February 2014), *available at* http://www.imss.gob.mx/sites/all/statics/i2f_news/009_PDF_1.pdf. However, as discussed below at pages 12-13, in practice, same-sex couples continue to have difficulties enrolling as spouses.

³⁵ Fernando Camacho Servín, *Presentan queja contra el gobierno por no actuar para erradicar la homophobia*, La Jornada (5 October 2012), *available at* <http://www.jornada.unam.mx/2012/10/05/politica/021n2pol>.

District.³⁶ The newspaper La Jornada reported that on August 21, 2012, CONAPRED rejected this demand.³⁷

In June 2013, the president of CONAPRED, Ricardo Bucio Mujica, described the Federal Law to Prevent and Eliminate Discrimination in Mexico, as “insufficient” because some states have not reformed their laws to correspond to this law.³⁸ And on its website, CONAPRED notes that “[t]he right to non-discrimination is not guaranteed on equal terms throughout the national territory.”³⁹ It goes on to state that because the federal antidiscrimination law is not a general law, those who live in states which lack such legislation at the state level are unprotected.⁴⁰

C. Failure to protect school children from homophobic bullying (violation of Articles 2, 7, 9, 17, 24 and 26).

School children throughout Mexico experience bullying, including insults, taunts, beatings, and other discriminatory behavior, based on their perceived or actual sexual orientation or gender identity. The perpetrators usually are the victims’ peers, but in some cases the bullies are teachers or other school staff.

A 2012 survey on homophobic bullying in Mexico⁴¹ revealed that 67% of the survey respondents reported having been victims of homophobic bullying.⁴² Seventy four percent of gay respondents reported having been bullied, as did 50% of lesbian respondents and 66% of transgender respondents.⁴³ Younger students were most at risk. Fifty six percent of respondents indicated that they had experienced the most bullying in middle school (grades 7-9), and 28% indicated that they had experienced the most bullying in primary school (grades 1-6).⁴⁴

³⁶ *Id.* Even in Mexico City, problems persist. The General Coordinator of Strategic Partnerships of the Federal District Human Rights Commission of Mexico (CDHDF) stated in 2012 that “despite legislative advancements for sexual minorities in the Federal District, ‘discriminatory conduct’ and violence against sexual minorities still exist.” Immigration and Refugee Board of Canada. Research Directorate. *Mexico: Situation of sexual minorities in Mexico City, Guadalajara (Jalisco) and Puerto Vallarta (Jalisco) [MEX104173.E]* at 1.1 (17 September 2012), available at http://www.ecoi.net/local_link/228199/336205_en.html.

³⁷ *Id.*

³⁸ Marisol Flores, *Insuficiente la ley federal contra la discriminación: Conapred*, NotieSe (11 June 2013), available at http://www.notiese.org/notiese.php?ctn_id=6675.

³⁹ Consejo Nacional para Prevenir la Discriminación (CONAPRED) [National Committee for the Prevention of Discrimination], *Modelo de Ley Para Prevenir y Eliminar La Discriminación en los Estados [Model Legislation for the Prevention and Elimination of Discrimination in States]*, available at http://www.conapred.org.mx/index.php?contenido=pagina&id=504&id_opcion=650&op=650.

⁴⁰ *Id.*

⁴¹ Comisión Nacional de Derechos Humanos (CNDH) [National Commission on Human Rights], *Encuesta Nacional sobre Bullying Homofóbico* [National Survey on Homophobic Bullying], 15 May 2012, available at [http://www.enehache.com/EncuestaBullying/Bullying%20homofobico-1\(14-May-12\).pdf](http://www.enehache.com/EncuestaBullying/Bullying%20homofobico-1(14-May-12).pdf). A total of 1273 respondents were surveyed, including respondents from Mexico City (D.F.) and 14 of Mexico’s 31 states.

⁴² *Id.* at 6 (unpaginated). This included 63% of respondents who attended private schools and 68% of respondents who attended public schools. *Id.* at 8 (unpaginated).

⁴³ *Id.* at 7 (unpaginated).

⁴⁴ *Id.* at 11 (unpaginated). The remaining respondents reported experiencing the most bullying in high school (grades 10-12) (13%) or university (3%). *Id.*

While the most commonly reported form of bullying was insults and taunts (experienced by 92% of victims of bullying), approximately one third (32%) of victims reported having been beaten.⁴⁵ Asked about the response of teachers and school authorities, only 3% reported that the bullies had been punished.⁴⁶ Forty eight percent said that teachers and school authorities did nothing because the conduct seemed normal to them, and 11% said they did nothing because they were themselves involved in the bullying.⁴⁷

This bullying has had profound effects on the victims. Fifty one percent reported suffering from depression and 25% had thought about suicide.⁴⁸

The survey highlighted the experience of a number of individual respondents:

* A young lesbian girl from Guerrero anonymously reported that the boys at her school refused to play with her, telling her she should accept that she is not a boy, stop being so weird and strange, and go play with the girls.⁴⁹

* A gay male from the Federal District anonymously reported that one day his classmates partially stripped him of his clothes, beat him, and put him in the girl's bathroom. They then put his clothes in the urinals. The teachers said that he had only fallen in the restroom.⁵⁰

* A young gay male from Sonora anonymously reported that in middle school, he won a cellphone in a school raffle. The school announced his name one Monday during the pledge of allegiance ceremonies. In order to get the cellphone, he had to walk in front of the entire student body. When he went to receive the phone, the entire middle school began to yell: "Oooooooh!" The young man explained that in Sonora, such yelling is like yelling "Queer." He said that he was humiliated in front of the entire school and that he walked as fast as possible so that everyone would stop yelling.⁵¹

* A young gay male from Chiapas anonymously reported that in high school, his teacher would put the girls in one row and the boys in another. His teacher would then place him between the two rows. The entire class would laugh at him, including the teacher.⁵²

Unfortunately, the kinds of bullying reported in the 2012 survey continue into the present. For example, on April 13, 2014, a mother from Guerrero accused the principal of her son's school of

⁴⁵ *Id.* at 15 (unpaginated).

⁴⁶ *Id.* at 17 (unpaginated).

⁴⁷ *Id.*

⁴⁸ *Id.* at 21 (unpaginated).

⁴⁹ *Id.* at 10 (unpaginated).

⁵⁰ *Id.* at 14 (unpaginated).

⁵¹ *Id.* at 16 (unpaginated).

⁵² *Id.* at 18 (unpaginated).

discriminating against her son because he is gay.⁵³ The mother told the media that her son's principal, Sara Suárez Gómez, verbally harassed her 14-year-old son in front of his classmates. According to the mother, three months before she went to the media about the problem, the principal began to tell her that her son is homosexual because of the way he acts, the way he walks, and the way he talks, and because he hangs out with other boys like him. The principal said that if the child was born male, then he must be a man, and she asked the mother to take her son to a specialist so that he can stop being this way. The mother reported that her son's attitude has changed and he no longer wants to go to school because of the way the principal treats him in front of his classmates. The mother demands that her child be treated the same as the other students and she is seeking help from the authorities on this matter.⁵⁴

Another example of bullying occurred on March 13, 2014, in Durango, when a male middle school student became the victim of an extreme physical form of homophobic bullying.⁵⁵ Seven of his classmates took a razor or knife and carved the Spanish word for "girl" in his left hand. Minutes after the attack, the injured child walked into the school office seeking medical attention. The school's medical service applied antiseptic, gave him a painkiller, and turned him over to the social work department, which then reported the case to the Ministry of Education. The school authorities searched for the seven suspected aggressors, but the victim was unable to identify his attackers. The school's principal told *La Jornada* that the victim has suffered school bullying ever since he was in primary school and that the majority of his past harassers attend the same middle school as the victim. Because of the victim's history with bullying, the school had assigned him a student tutor who accompanies him in class every day. However, when the attack occurred, the young boy had separated from the student tutor to use the restroom. The Durango State Commission on Human Rights initiated an investigation and the Ministry of Education is waiting for the investigation results.⁵⁶

D. Prohibition of same-sex marriage (violation of Articles 2, 23, 24 and 26).

Although Mexico City (D.F.) amended the Civil Code of the Federal District to allow same-sex marriage in 2010,⁵⁷ none of the 31 Mexican states has taken this step. Additionally, although the Federal Civil Code of Mexico does not explicitly define marriage as a union between a man and a woman, the pertinent marriage articles use the words "husband and wife" and "man and woman" to describe spouses.⁵⁸

⁵³ Anodis, *Directora hostiga a alumno porque segun es homosexual en Guerrero* (13 April 2014), available at http://webcache.googleusercontent.com/search?q=cache:gA_nPKmaD0YJ:anodis.com/nota/24976.asp+&cd=1&hl=en&ct=clnk&gl=us.

⁵⁴ *Id.*

⁵⁵ Saul Maldonado, *Con una navaja le escriben "niña" en un mano en secundaria de Durango*, *La Jornada* (21 March 2014), available at <http://www.jornada.unam.mx/2014/03/21/estados/029n2est>.

⁵⁶ *Id.*

⁵⁷ Código Civil Para el Distrito Federal [Federal District Civil Code], *as amended*, Articles 146, 391, *Gaceta Oficial Del Distrito Federal*, 5 April 2014 (Mex.), available at <http://www.aldf.gob.mx/archivo-e874716ab4a756cc528510ffeba2d84c.pdf>.

⁵⁸ Código Civil Federal [CC] [Federal Civil Code], *as amended*, Articles 98(1), 172, 173, 177, *Diario Oficial de la Federacion [DO]*, 24 December 2013 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/2.pdf>.

While Mexico's National Supreme Court of Justice (SCJN) has issued a number of important rulings on marriage equality, it has not yet issued a ruling binding throughout Mexico requiring states to allow same-sex couples to marry on the same basis as opposite-sex couples. In August 2010, the SCJN ruled that all 31 states of Mexico must recognize same-sex marriages registered in Mexico City.⁵⁹ That ruling clarified, however, that state governments were not obligated to enact same-sex marriage laws of their own.⁶⁰

Two years later, in December 2012, the SCJN went further and ruled that a law in the state of Oaxaca that banned same-sex marriages was unconstitutional.⁶¹ While this ruling benefitted the three same-sex couples who had brought the suit, it did not make marriage legally available to other same-sex couples in Oaxaca.⁶² Thereafter, authorities in Oaxaca continued to deny same-sex couples in Oaxaca the right to marry. This has forced the affected couples to seek injunctions in order to enjoy their rights, and thus has subjected them to discriminatory treatment in comparison to opposite-sex couples. On April 24, 2014, the SCJN granted an injunction to 39 gay and lesbian citizens of Oaxaca who, despite the SCJN's earlier ruling, had not been allowed to exercise their right to marry a person of the same sex.⁶³ Like the 2012 ruling, this ruling only applied to the particular individuals who had brought the legal action.⁶⁴

In March 2014, two women became the first same-sex couple to get married in the city of Leon, Guanajuato, where the state law does not allow same-sex marriage.⁶⁵ The couple had filed a lawsuit when they were denied a marriage license in September of 2013. The federal court granted the women an injunction, based on the Mexican Constitution's prohibition of discrimination on the basis of sexual orientation, which forced the state to allow them to marry.

⁵⁹ Matrimonio Entre Personas Del Mismo Sexo En El Distrito Federal. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Novena Época, tomo XXXIV, Agosto de 2011, Tesis P./J 12/2011, Pagina 875 (Mex.)*, available at <http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=161270&Clase=DetalleTesisBL>; David Agren, *Mexican States Ordered to Honor Gay Marriages*, *New York Times* (10 August 2014), available at http://www.nytimes.com/2010/08/11/world/americas/11mexico.html?_r=3&.

⁶⁰ Matrimonio Entre Personas Del Mismo Sexo En El Distrito Federal. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Novena Época, tomo XXXIV, Agosto de 2011, Tesis P./J 12/2011, Pagina 875 (Mex.)*, available at <http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=161270&Clase=DetalleTesisBL>.

⁶¹ Matrimonio Entre Personas Del Mismo Sexo. Pleno de la Suprema Corte de Justicia [SCJN][Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Decima Época, libro XIX tomo I, Abril de 2013, Tesis 1ª. CIII/2013, Pagina 964*, available at

<http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=2003311&Clase=DetalleTesisBL>; Huffington Post, *Mexico's Supreme Court Declares Anti-Gay Marriage Law Unconstitutional* (5 December 2012), available at http://www.huffingtonpost.com/2012/12/06/mexico-gay-marriage-law-unconstitutional-_n_2249701.html.

⁶² CNN México, *La Suprema Corte ampara a tres parejas gay en Oaxaca que quieren casarse* (5 December 2012), available at, <http://mexico.cnn.com/nacional/2012/12/05/la-suprema-corte-ampara-a-tres-parejas-gay-en-oaxaca-que-quieren-casarse>

⁶³ Alfredo Mendez, *Amparó la SCJN a 39 oaxaqueños a los que se negó boda con persona del mismo sexo*, *La Jornada* (24 April 2014), available at <http://www.jornada.unam.mx/2014/04/24/sociedad/041n2soc>.

⁶⁴ *Id.*

⁶⁵ Sofia Negrete and Mauricio Contreras, *Celebran en León primera boda gay*, *Milenio* (19 March 2014), available at http://www.milenio.com/region/Primer-matrimonio-homosexual-Guanajuato-Leon_0_264574114.html.

Even after winning the women had won this injunction, their right to marry was denigrated.⁶⁶ The judge who performed the nuptials – who was the same judge who had refused to marry the women in 2013 – told the local media that he was marrying them only because he had been forced by the federal judiciary to do so, and he emphasized that same-sex marriage is still against the law in Guanajuato.⁶⁷ The Governor of Guanajuato, Miguel Marez, concurred, noting that his state still prohibits homosexual unions.⁶⁸

In April 2014, in Yucatan, the federal judiciary ruled in favor of a same-sex couple who had challenged the authorities' refusal to allow them to marry.⁶⁹ However, the Civil Registry of Marriage of Yucatán still did not marry them, but instead gave the couple a receipt entitled “compliance with judgment.” The couple contended that the Registry's issuance of the receipt amounted to an illicit simulation of legal process, since their marriage was not recorded in the marriage register. Unfortunately, the court that had issued the ruling determined that the Civil Registry of Marriage had complied with the ruling.⁷⁰

In sum, although Mexico City respects the right of same-sex couples to marry on the same basis as opposite-sex couples, and although there have been a few court rulings allowing some same-sex couples in other parts of Mexico to marry, Mexico as a whole continues to discriminate with respect to marriage.

E. Discrimination in social security benefits for same-sex married couples (violation of Articles 2 and 26).

In a positive development, Mexico's National Supreme Court of Justice ruled on 29 January 2014 that same-sex spouses of those who receive benefits under the country's social security system must receive the same benefits as their heterosexual counterparts.⁷¹ The following month, on 17 February 2014, the Mexican Social Security Institute (IMSS) issued a press release stating that it would extend social security benefits to same-sex married couples.⁷²

⁶⁶ Sofia Vazquez-Mellado, *Federal judge imposes first same-sex 'marriage' in one of Mexico's most conservative states*, LifeSiteNews (21 March 2014), available at <http://www.lifesitenews.com/news/federal-judge-imposes-first-same-sex-marriage-in-one-of-mexicos-most-conser>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ La Jornada, *Registro Civil de Yucatan burla sentencia judicial* (24 April 2014), available at <http://www.jornada.unam.mx/2014/04/24/estados/032n4est>.

⁷⁰ *Id.*

⁷¹ Amparo en Revision 485/2013. Expediente de la Suprema Corte de Justicia [SCJN][Supreme Court], Enero de 2014, available at https://www.scjn.gob.mx/SegundaSala/2da_listas_asuntosresueltos/LR%2029-01-14SUPR.pdf; Michael Lavers, *Mexican Supreme Court rules on gay partner benefits*, The Washington Blade (31 January 2014), available at <http://www.washingtonblade.com/2014/01/31/mexican-supreme-court-rules-gay-partner-benefits/>.

⁷² Belen Zapata, *El Seguro Social dará beneficios a los matrimonios del mismo sexo* CNN Mexico (17 February 2014), available at <http://mexico.cnn.com/nacional/2014/02/17/el-seguro-social-dara-beneficios-a-los-matrimonios-del-mismo-sexo>.

In practice, however, same-sex married couples continue to experience difficulties in registering their spouses with the IMSS for social security benefits.⁷³ The same difficulties are encountered with respect to spousal benefits under programs administered by the Institute for Social Security and Services for State Workers (ISSSTE).⁷⁴ The problems appear to stem from lack of appropriate training for IMSS and ISSSTE employees. An additional problem is that the IMSS law, as written, continues to describe eligibility for benefits using language applicable only to opposite-sex couples (i.e., “the wife of the insured man” or the “husband of the insured woman”), thus appearing to exclude benefits for same-sex couples.⁷⁵

Human rights defender Lol Kin Casteñeda reports that she has advised almost 20 couples whose social security rights have been denied. In her view, there are many such cases in Mexico.⁷⁶

F. Failure to allow transgender individuals to conform their identity documents to their gender identity (violation of Articles 2 and 26).

Mexico City is the only jurisdiction within Mexico that permits transgender individuals to conform their identity documents to their gender identity. Transgender individuals elsewhere in Mexico must live without this formal recognition of their gender identity.

Without legal recognition of transgender and transexual identity, trans individuals (other than those from Mexico City) are forced to identify themselves using credentials or ID cards that contain a name, gender, and photograph that do not correspond to their name, physical appearance or actual identity. This leads to discrimination by health care providers, public security officials, and potential employers.⁷⁷ In the employment sector, hiring discrimination against transgender women forces many into paid sex work, thereby exposing them to a heightened risk of violence and murder.⁷⁸

⁷³ Carlos Portillo, *IMSS e ISSSTE continúan discriminando a parejas homosexuales*, *Revolución Tres Punto Cero* (24 February 2014), available at <http://revoluciontrespuntocero.com/imss-e-issste-continuan-discriminando-a-parejas-homosexuales/>.

⁷⁴ *Id.*

⁷⁵ Ley de Seguro Social [LSS] [Social Security Law] *as amended*, Articles 84, Sections III and IV, and Article 130, *Diario Oficial de la Federación [DO]*, 2 April 2014 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/92.pdf>.

⁷⁶ *Id.*

⁷⁷ Centro de Apoyo a las Identidades Trans A.C., *Informe Crímenes de Mujeres Trans en México, Invisibilidad = Impunidad* (2012) at 4, available at http://api.ning.com/files/Kmd9nT1FlrI6KSQric9UFNzXuQCUFQucpkUeqnT6J*D1Qhsg47O*yiY3hcbriWcRV5MEsNvHkhwsq7zmASMI61T8N5BrJsO/PRESENTACIONCRIMENESMUJERESTRANSENMEJICO.pdf.

⁷⁸ *Id.*

IV. Proposed Issues to be Included in List of Issues for Mexico

1. What steps will Mexico take (a) to prevent killings of LGBTI individuals because of their sexuality or their political activism as human rights defenders, (b) to develop appropriate protocols for the investigation and prosecution of such crimes, and (c) to maintain records of all such killings and the results of the ensuing investigations and prosecutions?
2. What steps will Mexico take to protect students from being bullied due to their sexual orientation or gender identity? In particular, what steps will Mexico take to ensure that all school administrators and teachers (a) create a climate of respect for sexual minorities, (b) firmly prohibit any form of bullying, and (c) take prompt and effective measures, in the event of bullying, to hold perpetrators accountable and provide appropriate compensation to victims?
3. What steps will Mexico take to ensure that same-sex couples are allowed to marry on the same basis as opposite-sex couples throughout Mexico? Will Mexico amend its Federal Civil Code to recognize marriage of same-sex couples?
4. What steps will Mexico take to revise the relevant laws and written policies, and to train and supervise all IMSS and ISSSTE staff, in order to ensure that same-sex married couples are allowed to register for social security spousal benefits on the same basis as opposite-sex married couples?
5. What steps will Mexico take to amend its federal and state laws to ensure that, throughout the entire country, transgender individuals are able to conform their identity documents to their gender identity?