

Report of the LGBTI Network of Venezuela to the United Nations Human Rights Committee on the Fourth Periodic Report of Venezuela concerning the International Covenant on Civil and Political Rights during the 114th Period of Sessions



**Human Rights**  
Situation of **Lesbian, Gays, Bisexual, Trans and Intersex persons** in **Venezuela**



May 2015

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## EXECUTIVE SUMMARY

This report was prepared by the LGBTI Network of Venezuela for consideration by the United Nations Committee on Human Rights, during the fourth periodic report of the Venezuelan State in the 114th Period of Sessions, on compliance with the International Covenant on Civil and Political Rights (ICCPR). The LGBT Network is a coalition of organizations dedicated to the defense of human rights of lesbian, gay, bisexual, trans and intersex people (LGBTI) in Venezuela; and it is currently made up of five organizations: Acción Ciudadana contra el Sida (ACCSI), Grupo Ases de Venezuela, Fundación Reflejos de Venezuela, Unión Afirmativa (UNAF) and Venezuela Diversa.

With reference to the implementation and enforcement of the ICCPR by the Venezuelan State, the Report of the LGBTI Network provides information about rights to non-discrimination based on sexual orientation, gender identity and expression, measures to make them effective and access to resources for their defense (**Article 2**); situations of torture, punishment, cruel, inhuman and degrading treatment, and arbitrary arrests of LGBTI people (**Articles 7, 9 and 10**); the right to recognition before the law of trans and intersex persons (**Article 16**); the right to freedom of expression, apology to national hatred based on homophobia and transphobia, and the right to peaceful assembly of LGBTI persons (**Articles 19, 20 and 21**); and the right to protection of same sex couples and families (**Article 23.1**).

Venezuela **has not made significant progress in the recognition and protection of civil and political rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people**, who constantly live situations of discrimination, threats and attacks against their moral, psychological or physical integrity, and still lack legal protection which makes them defenseless citizens in an atmosphere of alarming growth of homophobia and transphobia, as a result of the absence of laws, policies and institutions that guarantee equality in the exercise of fundamental rights and freedoms. While it is recognizable that the Venezuelan government has made efforts in the protection of historically discriminated groups such as women, indigenous people, children and adolescents, young, African descendants, and even the animals; LGBTI people are not among priority populations, as evidenced by the information provided in this report.

As such, under the provisions of the Covenant and the Venezuelan Constitution, and by virtue of the existence of favorable circumstances to change the conditions that stop LGBTI people from fully exercising their rights, we request the Committee to recommend the State **to adopt all the necessary measures within a reasonable time to make progress on legislative reforms and policies to ensure real equality** of civil and political rights of lesbian, gay, bisexual, trans and intersex **without excuses**

**founded on terms of culture, tradition and religion, or political preferences.** Likewise, the Venezuelan government should **revise its penal laws in order to consider the violations of civil and political rights** on grounds of sexual orientation, gender identity and expression as **hate crimes**, and implement diligent procedures **to ensure effective protection of LGBTI people** as well as the investigation, punish those responsible and adequate reparation for victims. For this purpose, it is given that the State claims to have created a **Special Ombudsman with National Jurisdiction in the area of human rights of LGBTI people**, we request the Committee to urge the State to put in full operation and to act diligently, together with the Public Ministry in cases of violation of rights on grounds of sexual orientation, gender identity and expression.

We also request the Committee to recommend the **Venezuelan State to instruct all security forces, national, regional and local, including police officers and military about standards and procedures to ensure effective protection of the human rights of LGBTI people, their partners and family;** establishing specific penalties that they would be incurred in if infringed; and incorporate in its information systems detailed **data on complaints of torture and other cruel, inhuman or degrading treatment, arbitrary detentions and violations of the right to life and personal integrity** based on sexual orientation, gender identity and expression; and investigated and resolved cases and penalties imposed in order to make a proper monitoring and tracking of cases.

In order to ensure full equality for LGBTI people in the exercise of their civil and political rights, we request the Committee to urge the Venezuelan government **to implement changes to internal rules to allow the changing of names and references to sex in the records of legal identity** for transgender and intersex people; to ensure respect from officials -regardless of their rank- towards LGBTI people and ensure strict compliance with the **prohibition of any opinion, speeches or messages that may incite hatred, violence or stigmatization** against them because of sexual orientation, gender identity and expression; to implement policies and communication and educational programs aimed at promoting equality and non-discrimination of LGBTI people; and to carry out the necessary **legal reforms to ensure the protection of LGBTI couples, their families and their children;** especially with regard to legal recognition of unions, the rights of spouses and the legal status of children and adolescents of same-sex families.

## INTRODUCTION

This report was prepared by the **LGBTI Network of Venezuela** for consideration by the United Nations Committee on Human Rights, during the **Fourth Periodic Report of the Venezuelan State** in the 114th Period of Sessions, on compliance with the International Covenant on Civil and Political Rights (ICCPR). The LGBT Network is a coalition of organizations dedicated to the defense of human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Venezuela; and it is currently made up of five organizations: Acción Ciudadana contra el Sida (ACCSI), Grupo Ases de Venezuela, Fundación Reflejos de Venezuela, Unión Afirmativa (UNAF) and Venezuela Diversa.

In the preparation of the Report a review of the ICCPR and the fourth report submitted by the Venezuelan State to the Committee in 2012 and the document that includes their responses to the List of Issues Test sent in 2015 was made. It is important to mention that the Report of the State did not provide any information about civil and political rights of LGBTI people in Venezuela and they only sent incomplete information and restricted to the actions of the Ombudsman, in the response document to the List of issues presented to the Committee -paragraphs 18 to 24.

Due to the limited information provided by the State -which is a sign of the little relevance that human rights of LGBTI people in the agenda of legislative and executive priorities - this report provides information on 9 rights of the ICCPR, accompanied by 8 recommendations to advance on real and effective change of the conditions that prevent LGBTI people to fully exercise their civil and political rights in Venezuela. These recommendations, however, have a favorable background, since organizations from the LGBTI community in the country have been persistent in pursuing a series of legislative proposals and policies that so far have not been fulfilled due to the rejection, failure and inaction of public authorities responsible for their implementation.

The report is divided into five (5) parts. The first includes the right to non-discrimination based on sexual orientation, gender identity and expression, measures to make them effective and access to resources for their defense (**Article 2**). The second refers to situations of torture, punishment, cruel, inhuman and degrading treatment, and arbitrary arrests of LGBTI people (**Articles 7, 9 and 10**). The third deals with the right to the legal status of trans and intersex persons (**Article 16**). The fourth refers to the right to freedom of expression, apology to national hatred of homophobia and transphobia, and the right to peaceful assembly of LGBTI persons (**Articles 19, 20 and 21**); and fifth, the right to protection of same sex couples and families (**Article 23.1**).

## I. RIGHT TO NON DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, MEASURES TO MAKE IT EFFECTIVE AND ACCESS TO RECOURSES FOR ITS DEFENSE (ARTICLE 2)

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1. Venezuela has signed and ratified all the resolutions, agreements and treaties on both the UN and the OAS, especially the Sixth resolution AG / RES. 2807 (XLIII-O / 13) Human Rights, Sexual Orientation and Gender Identity and Expression, and two conventions such as the Inter-American Convention against Racism, Racial Discrimination and Related forms of Intolerance, as well as the Inter-American Convention against All Forms of Discrimination and Intolerance. Similarly, Venezuela made commitments with regional organizations such as MERCOSUR, CELAC and ALBA to implement the provisions of international law in order to ensure the protection of human rights of LGBTI people; including the Yogyakarta Principles. However, these laws are not implemented.
2. The Constitution of the Bolivarian Republic of Venezuela (CRBV) recognizes the principle of non-discrimination of human rights<sup>1</sup>, prohibiting any act or omission that might nullify or impair their enjoyment and inalienable, indivisible and interdependent exercise, and equality before the law for reasons of race, sex, creed or social status, religious belief and other. Although it is not explicitly mentioned the non-discrimination on grounds of sexual orientation, it was clarified in Resolution No. 190 of the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ) in 2008, in response to a request for interpretation of that Article, by the Civil Association Unión Afirmativa de Venezuela: "... **the Constitutional Chamber of the Supreme Court, administering justice on behalf of the Republic by authority of law, interpreted in terms that were exposed, Article 21 the Constitution, in the sense that it is not possible within the Venezuelan constitutional framework, individual discrimination on grounds of sexual orientation of the person, and declare that there is no collision whatsoever, including as regards the terms of this request for interpretation, between Article 21 and Article 77 of the Constitution of 1999**"<sup>2</sup> (emphasis added).

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<sup>1</sup> Article 19. The State shall guarantee to every person, in accordance with the progressive principle and without discrimination, the enjoyment and inalienable, indivisible and interdependent exercise of human rights.

<sup>2</sup> Supreme Tribunal of Justice-TSJ (2008). Available at: <http://www.tsj.gov.ve/decisiones/scon/febrero/190-280208-03-2630.HTM>

3. In addition, to correct situations of discrimination, the CRBV establishes that the State has the duty to take **positive measures** to develop legal and administrative conditions to ensure real and effective equality before the law<sup>3</sup>, and the **progressive nature** of human rights, which can extend their guarantees under treaties, covenants and conventions on human rights signed and ratified by Venezuela, as it is favorable to the universal exercise<sup>4</sup>. But, so far, **Venezuela has failed to materialize a legislative initiative to change the legal status of LGBTI people**. In 2009, a draft of a Law on Gender Equality and Equity was introduced to the National Assembly (AN), which was approved in first reading and amended, without approval, by deleting all references to sexual orientation and gender identity. In 2011, the LGBTI Network participated in several initiatives to reform the Civil Registration Act and the Organic Code of Criminal Procedure, to recognize the right to identity and LGBTI rights partner, they were not accepted. The Law on Health Subsystem of the Social Security System it is expressly excluded the public coverage for change of sex; Organic Law for the Protection of Children and Adolescents, the adoption of children and adolescents was limited to heterosexual couples; and, the Education Law, in the original project all references on education against discrimination based on sexual orientation and gender identity were deleted.
4. Actually, few legal instruments, in some specific areas, mention discrimination on grounds of sexual orientation. Namely, Article 4 of the Organic Law of the People's Power (2010)<sup>5</sup>; Article 173 paragraph 6 of the Law on Institutions from the Banking Sector (2010)<sup>6</sup>; Article 3 of Resolution 185 Standards and Guarantees for the Rights of Women and the Equality of people of "Sex diversity" and Gender Equity in the Bolivarian National Police Corps and other bodies of State and Municipal

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<sup>3</sup> Article 21.2. The law shall guarantee legal and administrative conditions for equality before the law to be real and effective; adopt positive measures in favor of persons or groups who may be discriminated against, marginalized or vulnerable; especially protect those who for some of the conditions specified above, are in obviously vulnerable circumstances and punish any abuse or ill-treatment perpetrated against them.

<sup>4</sup>Article 23. Treaties, covenants and conventions on human rights signed and ratified by Venezuela, have constitutional status and take precedence in domestic law, insofar as they contain provisions concerning the enjoyment and exercise more favorable than those established in this Constitution and the laws of the Republic, and are of immediate and direct application by the courts and other public bodies.

<sup>5</sup> The Popular Power is designed to ensure the life and welfare of the people, by creating mechanisms for their social and spiritual development, ensuring equal conditions for everyone freely develop their personality, direct their destination, enjoy human rights and attain the supreme social happiness; without discrimination on grounds of ethnic, religious background, social status, sex, sexual orientation, gender identity and expression, language, political opinion, national origin, age, economic status, disability or any other personal, legal or social circumstance which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and constitutional guarantees.

<sup>6</sup> The Superintendency of Institutions from the Banking Sector, in order to make more effective and transparent the provision of banking services in the exercise of jurisdiction should (6) " ensure that banking institutions conduct their activities under the constitutional principle of participatory democracy, without discrimination on conditions of ethnic origin, religion, social status, gender, gender identity and expression, language..."

Police (2010)<sup>7</sup>; Article 5 of the Law for the Regulation and Control of Housing Leasing (2011)<sup>8</sup>; and Article 21 of the Labor Law and the Workers (2012)<sup>9</sup>. **These laws lack mechanisms to implement real and effective strategies** to prevent discrimination and inequality, so that, in reality, they are empty, harmless and useless laws.

5. Likewise, Venezuela **has no policies, plans, programs and services designed to meet the needs and demands of LGBTI people**. Specificity or equitable distribution of resources for the implementation of public policies do not exist for the LGBTI community who are invisible in official statistics, which results in exclusion from the exercise of basic rights from the perspective of their sexual orientation, gender identity or expression. This contributes to unequal treatment, including inhuman and degrading treatment.
6. The National Statistics Institute (INE) gave no results on LGBTI people that should have emerged from the last National Census of Population and Housing, conducted in 2011. Based on a request by the Civil Association Unión Afirmativa (UNAF) before this body, the "rule of inconsistency" that prevented the census registration of same-sex couples in the population census was removed. The INE commissioned UNAF with the work of informing the LGBTI and population in general, while the Institute would be responsible for training their personnel in this area. In October 2012, the President of INE, Elias Eljuri, reported that based on preliminary figures, there are between 4000 and 6000 same-sex couples in the country<sup>10</sup>. In August 2014, these figures disappeared from Census 2011 final report submitted and approved by the AN. The response from INE officials to UNAF was that the final data were much lower and inconsistent and, therefore, were insufficient to be included in the official figures.
7. Executive agencies have frequently alleged the existence of cultural barriers to justify the limited progress in the recognition and protection of the rights of LGBTI people. In 2011, in response to requests made by activist organizations to the competent authorities to allow renaming of trans and intersex people, the Rector of the National Electoral Council (CNE), Tibisay Lucena, told

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<sup>7</sup> "eradicate the conduct or situations of discrimination against women and gender-diverse people and ensure timely and comprehensive care to victims of discrimination and gender-based violence in order to create a culture of equality in the body of Bolivarian National Police and other state and municipal ..."

<sup>8</sup> Prohibit discrimination and provide protection to those who are especially vulnerable, or vulnerable to discrimination by: sexual orientation, gender identity, ethnicity, political and religious affiliation, economic status, marital status, age, social class, health and fitness, among others.

<sup>9</sup> "They are contrary to the principles of this Act, discriminatory practices. Any distinction, exclusion, preference or restriction on access and in working conditions is prohibited, based on reasons of race, sex, age, marital status, union membership, religion, political opinion, nationality, sexual orientation, disability or origin social, impeding the right to work are contrary to the constitutional principles ..."

<sup>10</sup> STOPVIH. (9-08-2012) INE: In Venezuela, there are between 4 and 6,000 homosexual couples. Available at:

<http://www.stopvih.org/noticias/ine-en-venezuela-hay-entre-4-mil-y-6-mil-parejas-homosexuales/> Consulted on 21-10-2014

representatives of the Organization Divas of Venezuela: **"That has been and remains difficult to permeate the minds of people influenced by religious and cultural precepts in this issue"**<sup>11</sup> (emphasis added). In the 154 hearing of the Commission in March 2015, where the LGBTI Network presented a report on the situation of human rights of LGBTI people, the state representative, Maria Alejandra Diaz said to the petitioners from the civil society and the Commissioners **"We have much to learn, because the issue is a cultural issue and a cultural issue is not resolved in 10 years or 15 years. Sometimes the cultural issue is resolved generationally, it's not an excuse, it's plain and simple reality"**<sup>12</sup> (emphasis added).

8. In March 2015, Freddy Bernal, deputy of the ruling party and by then President of the Police Reform Commission from Ministry of Popular Power for Interior Relations and Justice, during a television program at Globovisión and when asked by the journalist -can a homosexual be a police officer? – he said: **"... yes, they can be a police officer, provided they do not publicly reveal their sexual appetite because, imagine, a police officer who then wants to wear a pink shirt or paint his lips. That, at least in Venezuela, that does not go with our culture. And, I ratify, I have nothing against "sexual diversity". Everyone has the right to their sexual self-determination and there are men and women, sexual diversity, well qualified, intellectuals, university professors, but in terms of the National Armed Forces, it is my opinion, and on the Bolivarian National Police, there could be a person who is gay and that is the right of everyone to, but they could not say so publicly, because it goes against the structure formation of what should be a police officer"**<sup>13</sup> (emphasis added).
9. **The Ombudsman (DyP)** is the government agency responsible for monitoring human rights in Venezuela. But, contrary to the assertions by the State in paragraphs 18-14 of its response to the List of Issues, DyP has done little action on LGBTI matters without accomplishments or significant impacts to ensure the human rights of LGBTI people in the country. Gabriela Ramirez, former Ombudsman, publicly announced twice, first in 2010 and then in 2013<sup>14</sup>, the creation of a Special Ombudsman for the attention of LGBTI people, but it has not yet been created or updated the reasons for this situation, even though the State stated in paragraph 23 of its response to the List of Issues **"DdP created a Special Ombudsman with National Jurisdiction in the area of human rights of LGBTI people ..."**.

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<sup>11</sup> Dr. Tibisay Lucena meets with DIVAS DE VZLA. Kenya Azuaje. Available at: <https://divasdevenezuela.wordpress.com/2011/11/03/dra-tibisay-lucena-se-reune-con-divas-de-vzla/>

<sup>12</sup> Venezuela: Situation of human rights of LGBTI people in Venezuela [https://www.youtube.com/watch?v=4H\\_8Vxv9xoY](https://www.youtube.com/watch?v=4H_8Vxv9xoY)

<sup>13</sup> Freddy Bernal on tattooed and homosexuals people in the police. Available at: <https://www.youtube.com/watch?v=vS3krAWgmoM>

<sup>14</sup> Diario Últimas Noticias. (29-08-2013). Ramírez announces the creation of Special Ombudsman for LGBTI community. Available at: <http://www.ultimasnoticias.com.ve/noticias/chevere/sexo/ramirez-anuncia-creacion-de-defensoria-especial-de.aspx> Consulted on 21-10-2014.

10. Likewise, although it is recognized the work undertaken by DyP with civil society organizations for the approval of the "Law for the Promotion and Protection of the Right to Equality of People with HIV/AIDS and their Families" before the National Assembly (AN), in the original draft <sup>15</sup>submitted by NGOs and DyP it was mentioned throughout the legal instrument to protect people because of their "sexual orientation" and the necessary protection to people for their "gender identity and expression." However, the text adopted by the National Assembly<sup>16</sup> eliminated all mention of these two aspects, except for one provision that defines them as "vulnerable groups" and called them "communities of different sex." This reiterates the rejection of the authorities to keep all mention that refers to LGBTI people.
11. Moreover, although in Venezuela sexual orientation, gender identity and gender expression are not crimes, **no progress has been made to investigate and prosecute acts of violence against lesbian, gay, bisexual, trans and/or intersex people**, or against those perceived as such. There are no effective mechanisms to properly process complaints and civil, administrative, criminal penalties or disciplinary actions, when it comes to violence linked to discrimination based on sexual orientation, gender identity and expression. In addition, the agencies responsible for processing such serious situations, have shown in different forms, verbal, by omission and inaction, ignorance about the relevant procedure for cases of violence linked to sexual diversity, bringing as a result, the total abandonment of LGBTI victims and the violations to their rights are not punished<sup>17</sup>.
12. The Public Ministry is the organ responsible for ensuring respect for constitutional rights and guarantees in legal proceedings, as well as treaties, conventions and international agreements signed by the Republic. But this institution lacks answers in court proceedings that ensure respect for the rights and guarantees enshrined in the CRBV. Repair information given to LGBTI victims of violence (for example, compensation, rehabilitation, compensation, guarantees of non-repetition, satisfaction) is unknown.

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<sup>15</sup> Original version presented to the National Assembly in May, 2014. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/PROYECTO-DE-LEY-IGUALDAD-PERSONAS-VIH-Y-SU-EXPOSICION-DE-MOTIVOS-version-final-entregada-a-la-Asamblea-Nacional-el-9mayo20143.pdf>

<sup>16</sup> Final version was approved on August 14th, 2014 by the National Assembly. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/Ley-VIH-SIDA-versi%C3%B3n-aprobada-por-la-Asamblea-Nacional-el-14-agosto-2014.pdf>

<sup>17</sup> Video of the audience requested by the LGBTI Network to the Inter-American Commission on the Situation of LGBTI people in Venezuela. March, 2015. Available at: [http://www.oas.org/OASPage/videosasf/2011/10/102811\\_PV\\_V3\\_11am.wmv](http://www.oas.org/OASPage/videosasf/2011/10/102811_PV_V3_11am.wmv)

13. On February 22, 2011, the LGBTI Network of Venezuela, supported by a massive march, presented a proposal of a legislative agenda<sup>18</sup> to the National Assembly with the needs of LGBTI people<sup>19</sup>, the content is presented below:

- a) To establish **clear and precise provisions, including specific security organs and severe sanctions in case of discrimination based on sexual orientation or gender identity in all human activities**, including without limitation: education, health, social security, housing, sports, labor and others, as well as **the definition of hate crimes as a generic aggravating of all crimes**. All in accordance with the principle of non-discrimination set out in the judgment of the Constitutional Chamber of the Supreme Court of February 28, 2008 (case Unión Afirmativa de Venezuela) and Article 4 of the Organic Law of People's Power.
- b) **To recognize the economic rights of same-sex couples in conditions of equality and non-discrimination with opposite-sex couples**, as it has been established by the Office of the High Commissioner of the UN on Human Rights in different resolutions, and in accordance with the voluntary declarations of protection of persons based on sexual orientation, **through the amendment of three articles of the Law on Civil Registry**, following criteria widely accepted in law or jurisprudence guidelines of the region.
- c) **To recognize the right of persons to their gender identity-psycho-social self-perceived through a prompt, clear and not pathologizing and private that preserves equality of opportunity** through administrative procedure that reserves the previous identity, as it happens in the case of adoption, along the lines of the voluntary statements of protection of human rights of transsexuals, transgender and intersex assumed by Venezuela, in accordance with the principles of the protection of human rights under declarations, recommendations and opinions derived from international bodies to protect human rights. **This includes the change of name and sex on all the documentation of the individual without genital reassignment**. The lack of legal identity for trans people condemns them to exclusion, marginalization and the near impossibility of access to health, education, employment, housing and other basic benefits with equality and non-discrimination. To overcome this situation, it is necessary the reform of two articles of the Law on Civil Registry as described below, following the criteria embodied in laws or judicial decisions widely accepted in the region.

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<sup>18</sup> Proposal of LGBTI Legislative Agenda. Available at: <https://es.scribd.com/doc/49292745/Propuesta-legislativa-de-la-Red-LGBTI-de-Venezuela-a-la-Asamblea-Nacional-para-el-periodo-2011-2016>

<sup>19</sup> UNAF (2011). Video available at <http://www.youtube.com/watch?v=2bPijNnzY80> ; AZUL Diverso (2011). Available at: [http://azuldiverso.blogspot.com/2011\\_02\\_01\\_archive.html](http://azuldiverso.blogspot.com/2011_02_01_archive.html)

14. On May 17, 2011, the social movements that defend the human rights of LGBTI people held a rally in the vicinity of the National Assembly to reiterate the request for a declaration of May 17th as a "National Day against Homophobia and Transphobia". On September 15, 2011, representatives of the LGBTI Network of Venezuela met with the President of the National Assembly, Deputy Soto Rojas, to request the legislature to answer demands made in February of the same year<sup>20</sup>. **"You need to educate society, we listen but will not take any legal action in this regard"** was the response of the deputy. On September 19, 2011, after the failure of the meeting with deputy Rojas, the LGBTI Network delivered a letter demanding attention to the above requests made in February, to Cilia Flores, who served as the chairman of the Committee on Domestic Policy of the National Assembly, and who is the current First Lady of the Republic of Venezuela. No response was obtained.
  
15. On January 31, 2014, the NGO Venezuela Igualitaria along with other NGOs, social movements and LGBTI groups of all political preferences handed to the NA a project of the Equal Civil Marriage<sup>21</sup> that contemplates the partial amendment of the Civil Code, backed by over 21,000 signatures of citizens, and more than 47 civil society organizations of human rights. On July 17, 2014 Vice President of the Domestic Policy Committee of the National Assembly, José Javier Morales appointed deputy Modesto Ruiz as Chairman of the Subcommittee to discuss the Draft for the Equal Marriage Act. The media informed: **"Deputy Ruiz estimated that, by the end of July, the NA will prepare an agenda of forums and discussion groups to enable the different groups to discuss the essence of this struggle and be able to address the issue with the necessary knowledge to make decisions"**. Organizations that consign Project of Equal Marriage Act, do not know if these activities were carried out.

## RECOMMENDATIONS

16. Considering that discrimination violates human rights recognized in the Covenant and the Venezuelan Constitution, and by virtue of the existence of initiatives in favor of its elimination, **the State must take all appropriate measures within a reasonable period to make progress on legislative reforms** to ensure a real and effective equality of civil and political rights of lesbian, gay, bisexual, trans and intersex, with no excuses based on culture, tradition and religion, or political preferences.

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<sup>20</sup> Available at: [https://es-la.facebook.com/permalink.php?story\\_fbid=251668844877932&id=228229400520760](https://es-la.facebook.com/permalink.php?story_fbid=251668844877932&id=228229400520760)

<sup>21</sup> Available at: <https://es.scribd.com/doc/194454348/Proyecto-de-Ley-de-Matrimonio-Civil-Igualitario-Venezuela>

17. In order to advance on the judicial protection and enforcement of justice when rights recognized in the Covenant are violated on grounds of sexual orientation, gender identity and expression, **the State must revise their criminal laws in order to consider these violations as hate crimes**, and implement as soon as possible diligent and appropriate procedures **to ensure effective protection of LGBTI people** as well as the research, to punish those responsible and appropriate redress to the victims.
18. In terms of providing assurance in bodies and instruments for protection and defense of the rights recognized in the Covenant for LGBTI people, **the State must set in operation the Special Ombudsman with National Jurisdiction in the area of Human Rights of LGBTI persons** of the Ombudsman, as the State claims to have created; and to establish mechanisms for effective coordination between the Special Ombudsman and the Public Ministry, in order to act diligently in investigating cases of violation of these rights on grounds of sexual orientation, gender identity and expression.

## **II. TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT OF LGBTI PERSONS (ARTICLES 7, 9 and 10)**

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19. Lesbian, gay, bisexual, trans and intersex people have suffered and are suffering discrimination and impunity, that exposes them to **torture, punishment, cruel, inhuman and degrading treatment, including murder and acts of physical and verbal aggression, blackmail, extortion, persecution and arbitrary arrests, especially committed by state security bodies**. LGBTI people are in a total state of helplessness, abandonment and absolutely unprotected by the Venezuelan State. There is also a high degree of impunity in relation to the cases reported by LGBTI people about discrimination, aggression, violence, abuse, torture and killings based on sexual orientation, gender identity and expression. These situations are motivated by inaction and failure of public institutions in the administration of justice against the cases related to sexual diversity.
20. In 2003, the Organization Acción Ciudadana contra el SIDA (ACCSI) <sup>22</sup> published the "Report on Impunity in the Violation of Human Rights of the LGBT community."<sup>23</sup> This report shows the results of a study conducted in Caracas on a universe of 76 people surveyed, broken down into 63% gay men, lesbian 14%, 9% bisexual and 13% transgender. 68% of the total sample said they had

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<sup>22</sup> [www.accsi.org.ve](http://www.accsi.org.ve)

<sup>23</sup> ACCSI (2003). Report on Impunity in the violation of Human Rights of the GLBT Community. Available at: [http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI\\_Informe\\_Impunidad\\_DH\\_Comunidad\\_GLBT\\_2003\\_ACCSI\\_Marcia\\_y\\_Edgar.pdf](http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI_Informe_Impunidad_DH_Comunidad_GLBT_2003_ACCSI_Marcia_y_Edgar.pdf)

negative experiences with the police related to their sexual orientation; 100% of transgender people said they had negative interactions with the police, and 36% of lesbians reported a lower occurrence of these experiences. The team of ACCSI said: "It is overwhelming that such high incidence of negative experiences (including 'rattle'<sup>24</sup> or extortion, burglary, threats and detention, physical and verbal aggression and rape, among others), we find very **low levels of reporting**: the entire survey population, only 13% reported negative experiences. Among transgender and lesbians we cannot find any complaint". (emphasis added).

21. The same report notes that discrimination, prejudice, hatred and contempt towards LGBTI sexual orientation or identity; shame or low self-esteem of the victims and their families; false beliefs regarding the condition LGBTI as an offense; the false belief regarding the LGBTI condition as harmful to society; the criminalization of LGBTI environment; the daily violence and aggression, particularly in the case of transgender, are due to a desensitization to violations such as sexual harassment, rattling and detention: "... for impunity of human rights violations against LGBT people to operate and to fester in, **there must be a highly discriminatory society**, that looks at the members of that community with prejudice and hate, people whose sexual orientation and identity are considered harmful to society, which in the psychological mechanisms of impunity justify crimes and aggression. Usually, these crimes and human rights violations are committed in the belief that a service to society is being done. A mechanism for impunity such as the abuse of authority, very common in the LGBT community, also perpetuates this belief" (emphasis added).
22. In 2008, ACCSI published the second "Report on Homophobia, Violence and Impunity against the Community of Lesbians, Gays, Transsexuals and Bisexuals in the Bolivarian Republic of Venezuela"<sup>25</sup>, which showed the results of a study conducted in Caracas, Mérida and Maracaibo, cities where surveys were applied to a universe of 742 people of the LGBTI community, distributed as follows: 465 (63%) gay men, 107 (14%) bisexual, 103 (14%) lesbians and 67 (9%) transgender. **50% of respondents claimed to have had negative experiences with the police**: verbal aggression (36%), rattle (20%), physical assault (12%) and imprisonment (11%). As the report states: "**The transgender population remains the most affected by police and private violence, and the situation of impunity**; it appears as the population with the highest percentage of complaints

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<sup>24</sup> According to Pablo Fernández Blanco, it is a term that is defined in Venezuela in the manner of bribe or extort to the population applied by police officers or soldiers, removing people's money or items for reasons of any kind and affecting ordinary citizens and in vulnerable conditions. This practice, while suffered in many countries, in Venezuela it is considered a way that makes it a cultural characteristic in policing and military linked to public safety. See: <http://www.eluniversal.com/opinion/131202/matraqueo-y-reforma-policia>

<sup>25</sup> ACCSI (2008). Second report on Homophobia, Violence and Impunity against the Community of Lesbians, Gays, Transsexuals and Bisexuals in the Bolivarian Republic of Venezuela. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI-Narrativo-Informe-sobre-Homofobia-Violencia-e-Impunidad-contr-LGBT-en-Venezuela-a%C3%B1o-2008.pdf>

compared to gays and lesbians." It also stated: "It has kept the distrust of the justice system, fear and shame as the main reasons for impunity. Lesbians are the ones who denounce the least violations and abuses (92%), followed by Gay (90%), Bisexuals (87%) and Trans (82%) "(emphasis added).

23. About the results of complaints, the Report indicates: "The percentage of cases resolved on the total reported is 15%. Of the total respondents, 61% reported having been assaulted by individuals. 79% of these people did not report them. "Among the conclusions of this report it can also be noted: **"The LGBT community in Venezuela is still highly stigmatized and socially discriminated.** This is because phobias to sexual diversity and transgenderism as well as prejudices and animosities generated from the churches, political parties, trade unions, media, education system, health sector, unions and communities in general, what often includes the same affected people and their families "(emphasis added).
24. In 2012, the NGO Diverlex published the final report of the survey "Situation of discrimination and violence against LGBT people in Venezuela"<sup>26</sup>. A total of 237 LGBT people surveyed in various regions of the country, 219 (92%) respondents have been victims of discrimination and violence on the condition of LGBTI; 199 (82%) say that once were verbally attacked for being LGBT; 117 (73%) said they had thought about emigrating because of discrimination, though still living in Venezuela. 47 of those surveyed said they did not report the assault because of distrust in the justice system, shame, lack of information about possibilities of complaint and fear of reprisals, among others. As for discrimination in school or university for the past five years, 111 (46.84%) people said they believe discrimination remained the same, whereas 131 (55.27%) stated that the acceptance of the community had increased.

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<sup>26</sup> Diverlex (2012). Situation of discrimination and violence against the LGBT population in Venezuela. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/Diverlex-Reporte-encuesta-2012.pdf>

25. In 2013, ACCSI publishes "Venezuela 2013 report on hate crimes based on sexual orientation, gender identity and gender expression"<sup>27</sup> to the results of a newspapers study in 13 federal entities<sup>28</sup>, in the country where 99<sup>29</sup> hatred crimes<sup>30</sup> occurred based on sexual orientation, gender identity and gender expression between January 2009 and August 2013, broken down into 46 murders (beheadings, bullet wounds, burns, cast into the void, coils, choking, beating with blunt objects) and 53 aggressions of all kinds (torture, cruel, inhuman and degrading treatment, arbitrary arrests, verbal, physical and psychological abuse, threats, police onslaught, abuse of power, etc.) due to sexual orientation, gender identity and gender expression of the victims. In the media and reports of civil society working with the community of LGBTI, considered within the study, it was found that the victims are disrespected in their human dignity product of lesbophobia, homophobia, biphobia and transphobia that prevails in Venezuelan society, with the added problem that many LGBTI people are helpless and unprotected by public institutions. A clear demonstration was **the increase of 55.56% of murders motivated by sexual orientation, gender identity and gender expression** between 2012 and 2013. See Table 1.

**TABLE 1:**  
**Murders of LGBTI persons between January 2009 and August 2013**

Year	No. of murders of LGBTTTI per year	Variation in comparison with the previous year	
		No.	%
2009	5	-	-
2010	5	0	0%
2011	13	8	160%
2012	9	-4	< 30,77%
2013 (January to August)	14	5	55,56%
<b>Total</b>	<b>46</b>		

<sup>27</sup> ACCSI (2013). Venezuela 2013 report on hate crimes based on sexual orientation, gender identity and gender expression. Available at : <http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI-2013-Informe-Crimenes-de-odio-por-homofobia-Revision-Hemerografica-Enero-2009-Agosto-2013.pdf>

<sup>28</sup> Distrito Capital, Miranda, Zulia, Aragua, Mérida, Carabobo, Bolívar, Barinas, Lara, Vargas, Nueva Esparta, Táchira and Monagas.

<sup>29</sup> Each of these cases (killings, attacks and threats) are available in the annexes of the report, including links which are published in the consulted information sources.

<sup>30</sup> The *International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)*, defines hate crimes as "all that crime or attempted crime motivated by prejudice toward and against the victim on grounds of color, sex, sexual orientation, gender, gender identity, origin, ethnicity, marital status, birth, disability or mental, social status, religion, age, religious or political beliefs. "The Office for Human Rights and Democracy believes that hate crime is a term that can be used for those violent behavior against persons and / or their properties, which are presented in different variations: from strong words, teasing, jokes , threats, vandalism, hate, assault, theft, beating up to the murder. For "Letra S" these crimes communicate a menacing message to the rest of the members of those groups, communities or minorities.

26. Most of those killed were young people between 17-30 years of age (56.5%), followed by adults aged between 31 and 49 years (24%). 19.5% of the cases reviewed by news sources said the ages of the victims. In turn, 34.8% of those killed were men, 15.2% (7) trans and 2.2% (1) women. 47.8% of news sources did not identify the sex of the victims. Sources indicate that transgender 33 (71.7%) accounted for the highest number of LGBTI people killed, followed by 10 people male (21.7%) and female (2.2%). Most of the reviews (91.3%) did not report the sexual orientation of those killed; however, some indicated that 3 people were gay (6.5%) and lesbian (2.2%). Also, the type of job, 18 persons were sex workers (39.1%) ranked first of those killed, following 6 persons who worked in the area of beauty services (13.0%). Among the people killed were: a trans activist, a defender of human rights of LGBTI, two lenders, a watchman and an artist. Fifteen of the cases reported by news sources did not indicate the trade or occupation of the murdered victims.
27. This report highlighted **the "disposable character" of the bodies of the LGBTI people killed** as a common element of the cases reported by the consulted information sources. In this regard, avenues, streets and highways are the places where most of the killings of LGBTI people occurred (76%) or where their bodies were found. There were other places as areas to dump waste (garbage of an invaded building, blackwater river and scrub) and less traveled places (cemetery, construction sites and lonely places). In these murders, the anger, hatred and contempt of the victimizers against people with sexual orientation, gender identity and gender expression, other than heterosexual are evident. **54.3% of LGBTI people killed appeared with bullet holes; 10.9% of the murders were by stabbing.** It was also found that 6.5% of the cases reviewed by news sources did not indicate how the bodies were. The rest of the killings of LGBTI presented a wide variety: beheadings, torture, drowning, and beatings with objects, among others. See Table 2.

**TABLE 2:**  
***State of the bodies of LGBTI persons murdered***

	<b>Frecuency</b>	<b>%</b>
Gunshots	25	54,3
Stabbing	5	10,9
Beating, stabbing, gunshots	3	6,5
Not specified	3	6,5
Torture (blows to the face, scalp partial loss, etc.)	2	4,3
Drown in a Blackwater river "Río Guaire de Caracas"	1	2,2
Launched into space from a floor 9 and crashed into the concrete	1	2,2
Mowed down or thrown from a running car	1	2,2
Beheaded and stabbed	1	2,2
Savagely beaten with a block to sink his skull	1	2,2

Gunshots, beheaded and thrown into a grave of a cemetery	1	2,2
Gunshots, beheaded and burned	1	2,2
Beaten with a tire iron (tool for changing car tires)	1	2,2
<b>Total</b>	<b>46</b>	<b>100,0</b>

28. 76.1% of murders of LGBTI people reported by news sources did not indicate the reasons that led to these crimes. 8.7% of motive of homicides were unknown. The rest of the cases were for recovery of debts from drugs, theft, revenge and kidnapping, among others. One case corresponds to the murder of a lesbian whose motive was refusing to be groped by a man. Also, in 91.3% of cases of complaints by LGBTI killings, their status was unknown. In this regard, information sources consulted asserted that four (8.7%) cases were resolved (with 4 people charged), but it is not mentioned if the 42 (91.3%) remaining cases were successfully completed, see Table 11 of the report. The sources further indicated that 21 (45.7%) cases were reported to the organs of justice and 26 (56.5%) were under investigation. They also mentioned that during the study period, the organs of justice captured 10 people for the alleged murder of eight LGBTI people, whose motives are linked to sexual orientation, gender identity and gender expression of the victims.

29. On the other hand, during the period of this report study involving a total of **53 threats and attacks against LGBTI people** occurred, noting that in 2011 no news about assaults were published. However, for 2012 the highest number of cases was identified, with 33 attacks. See Table 3. Of the 53 cases identified in only two informational sources said the ages of the victims, one 18 and the other aged 19, representing 3.9% of all cases. Greater Caracas ranked first with more frequent attacks and threats related to sexual orientation, gender identity and gender expression. The second place was in Zulia and Aragua states.

**TABLA 3:**

***Attacks and threats against LGBTI between January 2009 and August 2013***

Year	No. of threats and attacks against LGBTTTI / per year	Variation in comparison with previous year	
		No.	%
2009	1	-	-
2010	8	7	700%
2011	No available records	-	-
2012	35	27	385,71% (compared to 2010)
2013 (January to August)	9	-18	< 66,67

<b>Total</b>	<b>53<sup>31</sup></b>	
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30. As for attack patterns, the report of ACCSI found **verbal, physical and psychological attacks (including extortion and torture with electricity)** were combined in 47.2% of cases; 18.9% were verbal type (such as teasing, insulting language, insults, threats, incitement to stigma, discrimination, persecution, violence and hatred); and 11.3% the attack was verbal with abuse of power. The remaining 7.5% combined acts of incitement to hatred, both written and verbal, and abuse of power. **66% of the attacks occurred in public places, and in many cases the workplace of some of the victims.** The report notes that 24.5% of verbal assaults were committed by actors of Venezuelan society with national influence; 7.5% occurred during statements offered to the media. Including representatives of political parties sympathetic to the government and the opposition, representatives of media and high officials of the different churches (Catholic Christian, evangelical Christian, Adventist, Jehovah's Witnesses, among others). See Table 4.
31. Some high authorities of the State (President, Ministers, Members of the National Assembly) committed these attacks with insults, degrading treatment, harassment, threats, stigmatization, discrimination, social hatred and violent practices. The report also highlighted the verbal attack by a deputy of the National Assembly, who from the Chamber publicly expressed his homophobia. In the case of police officers, the disproportionate use of force, arbitrary arrest and unjustified deprivation of liberty are practiced. Some attackers used firearms to threaten and cause gunshot wounds, according to news sources. **In 98.1% of cases, it does not mention whether or not the attacks were known to organs administrators of justice.**

**TABLE 4:**  
**Forms of attacks and threats against LGBTI persons**

<b>Forms of aggressions</b>	<b>Frecuency</b>	<b>Percentage</b>
Verbal, physical and psychological	25	47,2
Verbal	10	18,9
Verbal y abuse of power	6	11,3
Instigation to hatred, harrasment, difamation, written/verbal aggression, abuse of power	4	7,5
Gunshots	3	5,7

<sup>31</sup> Each of these cases of attacks and threats are recorded in the annexes F, G, H, I y J of the report of ACCSI 2013. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI-2013-Informe-Crimenes-de-odio-por-homofobia-Revision-Hemerografica-Enero-2009-Agosto-2013.pdf>

Instigation to hatred and persecution	3	5,7
Beaten with a tire iron (tool for changing car tires)	1	1,9
Burns on 30% of the body	1	1,9
<b>Total</b>	<b>53</b>	<b>100,0</b>

### Some attacks occurred between September, 2012 and February, 2013.

Burned for being gay: Angelo Alfredo Prado Perdomo, a 18-year-old gay man was soaked in petrol and set on fire in front of the doors of a school where he was to be enrolled, causing third degree burns to 30% of his body. Then a young neighbor told the media "Here in this neighborhood we do not accept gays." The authors of this attack were a youth group of high school students. The status of the case is unknown<sup>32</sup>.

A lesbian killed and another wounded by demanding respect: A lesbian couple was injured by gunshots, because one of them refused to be groped by a man. One victim was hit in the arm and the other girl in the head, who died a few weeks. The status of this case is unknown<sup>33</sup>.

32. In 2014, ACCSI publishes "Sexual Diversity Report: Rights, discrimination and violence Survey Venezuela Pride Parade 2013"<sup>34</sup>, which reflects the results of a survey of 650 people who attended three LGBTI Pride marches performed in 2013, in the cities of Caracas<sup>35</sup>, Valencia<sup>36</sup> and Maracaibo<sup>37</sup>. The aim of the survey was to determine the perception of respondents about discrimination and violence that affect them, and the actions of public institutions in these situations. 42.6% of the population group surveyed was LGBTI young people between 18 and 24, and 28.6% were aged between 24 and 30 years<sup>38</sup>. The results showed that **the relationship with the security forces of the Venezuelan State was misqualified by most LGBTI people** surveyed: 38.6% rated it as "very negative", 14.2% "negative"; 2.3% considered it "very positive" and 2.0% "positive"; even when only **172 people (26.5%) asserted having had negative experiences** with these bodies due to their sexual orientation, gender identity and gender expression.

<sup>32</sup> Further information at: <http://eltiempo.com.ve/venezuela/violencia/aqui-en-este-barrio-no-se-aceptan-gays/70318>

<sup>33</sup> Further information at: <http://venezueladiversaac.blogspot.com/2012/11/jovenes-lesbianas-resultan-heridas-por.html>

<sup>34</sup> ACCSI (2013). Sexual Diversity Report: Rights, discrimination and violence Survey Venezuela Pride Parade 2013. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/ACCSI-Diversidad-sexual-Derechos-discriminaci%C3%B3n-y-violencia-Encuesta-Marcha-del-Orgullo-Venezuela-2013.pdf>

<sup>35</sup> Capital of Venezuela.

<sup>36</sup> Main industrial city of Venezuela, capital of Carabobo state.

<sup>37</sup> Capital of Zulia state and considered the second capital of Venezuela, it is the main city of the western side of the region where the main oil industry of the country is located.

<sup>38</sup> In terms of educational level, 33.7% reported having a full university level, 29.2% an incomplete university level and 26.8% complete secondary level. On their employment status, 59.1% said they were employed in contrast with 20.5% who said having an informal job, and 19.7% reported being unemployed.

33. Of the people who said they had been victims of officials only **36 people (20.9%) decided to denounce, mostly to the Public Ministry (11.1%)** and, secondly, the CICPC (11, 1%). It is noteworthy that only one person submitted his complaint to the DyP and 14 LGBTI (38.9%) did not provide the name of the institution where he made his. **Of the reported cases, 44, 40% was not resolved**, 13.90% were rejected and only 19.4% were answered. As for the group of LGBTI people who did not realize complaint, **45.6% said they had "no confidence in the system of administration of justice"; 19.96% said they felt "fear and shame", 19.99% expressed frustration with the process; and 22.8% described the dismissal of the case for lack of documentation.**
34. About the **negative experiences with state security bodies**, referred to in this report, **45.9% of LGBTI people reported verbal abuse due to sexual orientation, gender identity and gender expression; 22.7% reported being a victim of extortion; 19.8% reported physical assault and 9% injuries with weapons and sexual violation.** 21.5% did not answer the kind of experience. Among the security forces involved in 27.1% of cases it was identified to the Bolivarian National Police (PNB); 22.4%, the National Guard (part of the Bolivarian National Armed Forces; and 5.9% officials from CICPC. Others were members of Regional and Municipal Police, Patrimonial Guard and Traffic Police.
35. These data show that **attacks against the LGBTI community have been occurring in Venezuela for many years, majority of which being unpunished**, because the Venezuelan State has failed to fulfill its obligations to prevent, investigate and deliver justice to stop hatred crimes based on sexual orientation, gender identity and gender expression. Repeatedly, both civil society and the movements of the LGBTI community belonging to political parties (government and opposition) have been denouncing and alerting about the seriousness of these crimes, as well as presenting proposals and recommendations of laws and policies for the effective guarantee and restitution of the rights of people of sexual diversity and to criminalize hate crimes in the Criminal Procedure Code. But none of this has happened.
36. This is how the results of the above mentioned report indicate that the **LGBTI community in Venezuela has a negative perception of the performance of state institutions about their obligation to respect and guarantee their rights.** Of the 650 people surveyed in the three LGBTI Pride marches 2013 held in Caracas, Valencia and Maracaibo:
- a) 31,4% evaluated "Very negative" and 17,5% considered "Negative" the performance of the Presidency of the Republic,
  - b) 34, 2% evaluated "Very negative" and 20, 5% considered "Negative" the performance of the National Assembly.

- c) 33, 7% evaluated “Very negative” and 20% considered “Negative” the performance of the Public Ministry.
- d) 27, 8% evaluated “Very negative” and 21, 1% considered “Negative” the performance of the Ombudsman (DyP).

### RECOMMENDATIONS

- 37. In accordance with the agreement and the recommendations of the United Nations on the implementation of the United Nations Convention Against Torture, cruel, inhuman or degrading penalties, **the State must instruct all security forces, national, regional and local including police and military officials on rules and procedures to ensure the effective protection of the human rights of LGBTI people, their partners and families;** establishing specific penalties in which they would be incurred for breaking them.
- 38. In order to give sufficient **visibility to the issue of violence against LGBTI people and show progress in the fight against impunity,** the State must incorporate into their information systems, **detailed data on complaints of torture and other treatment or cruel, inhuman or degrading punishment, arbitrary detentions and violations of the right to life and personal integrity** based on sexual orientation, gender identity and expression; and detailed statistics of cases investigated and resolved, and sanctions applied, in order to make a proper monitoring and tracking of cases.

### III. RIGHT TO RECOGNITION BEFORE THE LAW OF TRANS AND INTERSEX PERSONS (Article 16)

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- 39. Several organizations dedicated to the rights of LGBTI (Diverlex, Divas and Unión Afirmativa de Venezuela) have asked the CNE to approve the change of name and gender of trans people and intersex to allow legal identity documents, but until the date it has not been put into effect. Diverlex, in its report to the Universal Periodic Review of the Venezuelan State at the UN October 2011, said: **"In Venezuela, there are no mechanisms to change name and gender of transsexual and transgender people.** Lacking of legal identity is like being a species of illegal immigrants in their own country, and therefore, they suffer violations of their civil and human (...) rights. Their vulnerability often leads them to be subject to situations of near slavery, trafficking and prostitution as the only way of life "(emphasis added).<sup>39</sup>

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<sup>39</sup> Report of Diverlex to Universal Periodic Review. UN. 12th Session. October, 2011.

40. The Civil Registration Act provides in Article 146, the changing of name -one time- through a simple administrative act of rectification of birth certificate, in cases where the name "is infamous, subject to public ridicule, undermines his moral integrity, honor and reputation, or **does not match their gender, affecting the free development of his personality**" (emphasis added). This right due to a reform of the Act by the National Assembly in 2009, with the explicit aim of allowing the renaming of trans and intersex people, as it was picked up by the official media in statements by then MP of the ruling party Iris Varela: "-People who decide to change their sex, may change its name with the adoption of the draft of Civil Registry Law" - as reported by the deputy Iris Varela, after the second reading in the National Assembly. According to Varela "This represents a breakthrough in Venezuelan law, it is a way of breaking discrimination against people who decide to change their sex and who because of the difficulty of the modification process, they must keep a name that does not identify with their appearance or what they want to be. The law is simplifying such important acts as it was a very cumbersome affair to start rectification, now this establishes an expeditious process even without the red tape at the registration office- she said".<sup>40</sup>
41. However, organizations dedicated to defending the rights of LGBTI people do not know of any case in which it was possible to exercise this right provided by law in the Registry Offices of the country, whose officials have been ordered to lead such cases to courts to be aired through legal proceedings, **leaving the decision to allow renaming of trans and intersex persons to discretionary criterion of the judges**. In 2011, several organizations exercised their right to peaceful demonstration outside the main office of the Civil Registry of the city of Caracas, due to the lack of response to a proposed regulation of article 146 of the Civil Registration Act in order to facilitate its application, including the provision in the proposal for requirements of written manifestation of will, upon confirmation of identity, medical certificate and affidavit of informed consent. So far, no effective progress has been made for implementing the Article. By contrast, **trials continue to be held for processing requests for change of name by trans and intersex people, the majority being rejected by the judges**, after being subjected to a long and humiliating amount of medical, psychological or psychiatric examinations, and forensic tests.
42. Moreover, in 2011 the Organization Divas of Venezuela presented to Tibisay Lucena, Rector of the CNE-organ responsible for developing the National System of Civil Registration- a request for doing the corresponding errands in order to advance on the change of sex identification on birth certificates and other identity records of trans and intersex people. However, the response by the

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<sup>40</sup> New Civil Registration Act to allow rename of transsexuals. Taken from Agencia Venezolana de Noticias (AVN) by El Universal, 31.07.09. Available at: [http://www.eluniversal.com/2009/07/31/pol\\_ava\\_nueva-ley-de-registr\\_31A2570963](http://www.eluniversal.com/2009/07/31/pol_ava_nueva-ley-de-registr_31A2570963)

Rector was that "... **the change in biological identity was difficult at the moment**"<sup>41</sup> (emphasis added). On this view, Article 56 of the CRBV dictates that birth registration at the registry aims to "obtain public documents constituting evidence of the biological identity" (emphasis added); which could be interpreted as an obstacle to the possibility of sex change in the records of legal personality of trans and intersex people. However, consistent with the right to **free development of personality and physical, mental and moral integrity of every person**, enshrined in Articles 20 and 46 of the CRBV; "biological identity" contained in birth could not by itself, nor be a document whose contents obey the judgment of others at the time of birth (doctors, parents and registrars), determining overlap or gender identity the person gives themselves. In this regard, Tamara Adrian, Venezuelan activist for the rights of LGBTI people, said: "**The state cannot but recognize who you are, and cannot prevent you from being who you are** (...). Why there is the word "sex" in identity documents?, for the same purpose, the term "race" or the word "religion" to deny rights to some and give rights to others (...). (Also) to deny rights to women and give them to men ..." <sup>42</sup> (emphasis added).

43. Furthermore, since the legal personality has direct effects on the enjoyment of other rights, the Report "The Right to Nondiscrimination for HIV in Venezuela", 2011, published by the NGO Acción Solidaria notes that **the prohibitive interpretation of Article 56 of the Constitution** "... limits the right to citizenship, which all Venezuelans exert is not subject to political disablement or civil interdiction (...). To impose acceptance of a foreign biological identity to the person -through which the recognition of nationality and citizenship-is acquired, places them in a context beyond protection and condemns them to be invisible as a citizen"<sup>43</sup> (emphasis added).

## RECOMMENDATIONS

44. To ensure full citizenship by transsexuals and intersex in Venezuela, a condition that affects all human rights, the Venezuelan state must tackle to enforce or modify internal rules enabling the change of name and sex mention in the records for legal personality or identity, including birth certificate and other registry documents, without hindrance, arbitrary or unreasonable requirements; according to the Constitution and the favorable international law, protecting personal information of trans and intersex people handled by the State.

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<sup>41</sup> Divas de Venezuela at the Electoral Power. May 09, 2011. Divas de Venezuela. Available at: <https://divasdevenezuela.wordpress.com/2011/05/09/650/>

<sup>42</sup> Tamara Adrian in tv program "Vladimir a la Una", on Globovisión. Available at: <https://www.youtube.com/watch?v=t4aeKRAAZr0>

<sup>43</sup> ACSOL (2011). The Right to Non Discrimination for HIV in Venezuela. Available at: <http://www.accsi.org.ve/accsi/wp-content/uploads/Informe-AcSol-Septiembre-20111.pdf>

#### IV. FREEDOM OF EXPRESSION, APOLOGY FOR NATIONAL HATRED BASED ON HOMOPHOBIA AND TRANSPHOBIA, AND RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION OF LGBTI PERSONS (Articles 19, 20 y 21)

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45. CRBV establishes in Article 57 that, the right to freely express thoughts, ideas and opinions orally, in writing or by other forms of expression, uncensored, anonymous, or war propaganda are not allowed or discriminatory messages or those promoting religious intolerance. However, **the discourses and practices of homophobia have reached extraordinary levels in Venezuela.**
46. Public and private spaces (parks, museums, restaurants, shopping centers, etc.), are places where LGBTI people experience **situations of stigma and discrimination by law enforcement officials, or police surveillance.** In the case of private spaces, such as restaurants, the situation is very similar. The expressions of affection, such as walking holding hands or hugging, kissing or any other expression that are normally carried out by two people of different sexes, are censored in the case of two persons of the same sex.
47. Through the social network Twitter, it was reported the case of a couple of men who were discriminated against because of a kiss on the premises of a restaurant bar "Cielo Restobar" located in the city of Merida, Merida state. The manager of the place demanded the couple to vacate the premises aggressively. Later there was a public announcement of the restaurant where they expressed **"we do not agree with any discrimination or support actions that go against public morality"** (emphasis added), but never apologized to the couple<sup>44</sup>. It is unknown if there was any complaint with public institutions and also, if there was any official reaction.
48. In the media, it is often seen on television and comedy shows particularly, **the presence of gay male characters that are stereotyped, ridiculed and used as a source of mockery.** In December 2011, the Revolutionary Media Observatory for Sexual and Gender Diversity filed with the National Telecommunications Commission (CONATEL) a complaint against the program "¡A qué te ríes!" a broadcast by the private TV channel Venevisión. According to the complaint in the program "a language of double meaning, macho, sexist, classist, homophobic and xenophobic" was used.<sup>45</sup>

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<sup>44</sup> Contrapunto.com (2014). Twitter users denounced a case of homophobia in a restaurant in Mérida. Available at: [http://contrapunto.com/index.php?option=com\\_k2&view=item&id=3895:usuarios-en-twitter-denuncian-caso-de-homofobia-en-restaurant-de-merida&Itemid=105](http://contrapunto.com/index.php?option=com_k2&view=item&id=3895:usuarios-en-twitter-denuncian-caso-de-homofobia-en-restaurant-de-merida&Itemid=105)

<sup>45</sup> ALBATV. (December 15, 2011) Available at: <http://www.albatv.org/Denuncian-a-canal-privado-por.html> Consulted on 21-10-2014.

49. Furthermore, the **allegations made by NGOs do not receive any response. No sanctions, fines or penalties of any kind against individuals or institutions that express in a discriminatory manner against the LGBTI population**, although it is covered by several laws, including the Law on Social Responsibility in Radio, Television and Electronic Media<sup>46</sup> enacted in 2010, and whose Article 3 stipulates the duty of the media to "promote the effective exercise of and respect for human rights, in particular those concerning with the protection of honor, privacy, intimacy, image, confidentiality and reputation .... "
50. At its 29th session in November 2002, the **Committee against Torture of the United Nations, expressed concern about "reports of threats and attacks against sexual minorities"**, having considered the report submitted by the Venezuelan State. This reality has been strongly denounced by several organizations, including Venezuela Diversa, Unión Afirmativa de Venezuela (UNAF), Red LGBTI de Venezuela and Reflejos de Venezuela. It has also been made visible in reports produced by civil society organizations.
51. The Venezuelan case is an expression of the concerns of the UN about the damage caused by homophobia and transphobia to human rights<sup>47</sup>. **Homophobic expressions of senior Venezuelan State (President, Ministers and Deputies), as well as members of the police, political party leaders and senior representatives of the different churches were present in the period 2009-2013. Between 2011-2013, these expressions reached alarming levels** as an instrument of offense and denigration of political opponent in the context of presidential and gubernatorial elections, and in polarization in Venezuela. According to the report on hate crimes based on sexual orientation, gender identity and gender expression by ACCSI in 2013- mentioned above, 56.9% of attacks against LGBTI people come from officials of the police, and 19,6% of senior Venezuelan government officials and political leaders from the ruling party and opposition). The same report notes that 90.6% of people who carried out the attacks were linked to the victims, since they

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<sup>46</sup> Available at: <http://www.leyresorte.gob.ve/wp-content/uploads/2012/07/Ley-de-Responsabilidad-Social-en-Radio-Television-y-Medios-Electr%C3%B3nicos.pdf>

<sup>47</sup> "The fight against homophobia is an essential part of the broader human rights for all battle," said UN Secretary General Ban Ki-moon on the International Forum on the International Day Against Homophobia. In the same forum, the High Commissioner of the United Nations for Human Rights, Navi Pillay, said "Homophobia and transphobia are no different from sexism, misogyny, racism or xenophobia. These last forms of prejudice are universally condemned by governments. However, homophobia and transphobia are often overlooked by the authorities. " Among the issues of greatest concern to the UN, "are hate crimes, ranging from harassment and torture to the kidnapping and murder; the criminalization of homosexuality; and discrimination against these people for lack of national laws to protect them. " In his speech to the International Forum on the International Day Against Homophobia (IDAHO), held in The Hague, Netherlands, on May 17, 2013". See: <http://acnudh.org/2013/05/onu-destaca-los-derechos-humanos-de-las-personas-lgbt-en-el-dia-internacional-contra-la-homofobia/>

exercised their work in an institution or organization to which the authors belonged<sup>48</sup>, such as State agencies, the media, churches and social organizations. See Table 5.

**TABLE 5:**  
**Authors of attacks and threats against LGBTI persons**

Authors of attacks and threats	Frecuencia	Porcentaje
Officials of Security Forces (National Guard, Police of Chacao, CICPC)	29	54,7
Politicians (President of the Republic, Foreign Affairs Minister, Minister for Prisons, President of the Comptroller Commission of the National Assambly, political party spokesperson, Deputy, Ex candidates for Deputy at the NA, Secretary of a political party from opposition)	12	22,6
Religious personalities from different churches	3	5,6
Media	2	3,8
Human Right and LGBTI Activist in Venezuela	1	1,9
President of Organization Miss Venezuela	1	1,9
Student	1	1,9
Not specified	4	7,6
<b>Total</b>	<b>53</b>	<b>100,0</b>

52. Among the emblematic cases of speeches of homophobia, we highlight the state officials, among which are:

- a) In April 2012, Minister of Foreign Affairs of Venezuela, Nicolas Maduro -current President of the Republic in a public ceremony held outside the embassy of the Republic of Cuba in Caracas, said: "**... so it is the likes of these snobs "sifrinitos", fags "mariconsones" and fascists who seek election to the people of Venezuela ...**"<sup>49</sup>. This homophobic speech won laughter and applause in approval of the Minister for Youth, Mary Pili Hernandez; the Health Minister Coronel Eugenia Sader; of the Ombudsman of the Republic of Venezuela Dr. Cilia Flores<sup>50</sup>; and the late Robert Serra, deputy of the ruling party PSUV (United Socialist Party of Venezuela) to the AN. Given these statements, various LGBTI organizations and public opinion spoke in rejection. The Organization Venezuela Diversa<sup>51</sup> issued a statement which said: "Such statements become an institutional

<sup>48</sup> According to the Dictionary of the Royal Spanish Academy. Also it notes that institution is "Each of the key organizations of a state, nation or society." Available at: <http://lema.rae.es/drae/?val=instituci%C3%B3n>

<sup>49</sup> These statements were broadcasted by Venezolana de Television, the main TV channel of the Venezuelan State. Available at <http://www.youtube.com/watch?v=gVLol-FSZDI>

<sup>50</sup> She is currently the First Lady of the Republic of Venezuela wife to President Nicolás Maduro.

<sup>51</sup> Available at <http://venezueladiversaac.blogspot.com/2012/04/homofobia-en-la-politica-incita-el-odio.html>

problem to be taken into account as soon as possible, because those who send these messages to society are political actors adding to the cycle of violence, attacks and hate against each other, right now that are in electoral campaign, which can lead his followers **to intensify situations of hatred, bigotry, harassment and conflict, on the one hand, by the dehumanization and disqualification of political opponents** and, the other, by the fact morally **justify homophobic actions against LGBTI** individuals and groups due to the direct **connection of different sexual orientations and gender identities with such partisan political fray**" (emphasis added).

- b) In March 2013, as Acting President of the Republic, Nicolas Maduro, at the time of the registration of his candidacy to the CNE to participate in presidential elections scheduled for April, alluding to his main political adversary Henrique Capriles -current governor of Miranda state, who is a young bachelor of 40 years, said: " Hear me out, I have a woman, I like women and I have her here," "How good is the kiss of a woman or a being you love"<sup>52</sup>. Given this, a mobilization of members of the organization Frente por la Inclusión y el Respeto de la Diversidad Sexual (Firedisex) was called out, which went before the CNE to demand a ban of homophobic allusions in the speeches of the candidates<sup>53</sup>. This group originated "from the great discomfort caused throughout the LGBTI community in the country by the homophobic statements of the candidate Nicolas Maduro and Acting President of the Bolivarian Republic of Venezuela, during the registration of his candidacy." They said they made a walk in rejection of the use of homosexuality as a political weapon. Jose Ramon Merentes activist of NGO Unión Afirmativa de Venezuela Said: "Our Constitution prohibits discrimination of all kinds, including sexual orientation." In addition, in the document handed in to the CNE they reminded the agency: "It is a debt that the National Civil Registry Office keeps with the trans population whose right to identity is being violated". The CNE never spoke about it.
- c) In April 2013, the Minister for Prisons Iris Varela, wrote on her Twitter account: **"What is the problem "peo" with Chavez becoming a bird? Capriles is alive and he is a tremendous duck (fag)"**<sup>54</sup>. In August 2013, Pedro Carreño, deputy of the ruling party, during a session in the National Assembly, also expressed in reference to Henrique Capriles, "respond homosexual, queer, accept the challenge, you, accept the challenge. You must be serious"<sup>55</sup>, "That's your problem what you do with your ass (sic), but you have to be serious". LGBTI community members held protest actions in the doors of Parliament to reject the homophobic attack and the use of offensive and

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<sup>52</sup> Video available at: <https://www.youtube.com/watch?v=Z4ONBIOvPG0>

<sup>53</sup> A Newspaper entitled its review of the news "Community of sexual diversity demands the CNE to ban homophobic expressions". In Noticias 24 (March 2013). Available at: <http://www.noticias24.com/venezuela/noticia/157406/comunidad-de-diversidad-sexual-exige-al-cne-prohibir-alusiones-homofobicas/>

<sup>54</sup> Available at: <http://www.noticiasdeaquí.net/actualidad/politica/7780-ministra-iris-varela-cual-es-el-peo-que-chavez-se-convirtiera-en-pajarito-capriles-esta-vivo-y-es-tremendo-pato.html>

<sup>55</sup> Available at: <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/pedro-carreno-tilda-de-homosexual-a-capriles-r.aspx>

discriminatory language inciting hatred of people of sexual diversity by the Deputy, stating that: "We are facing a homophobic and transphobic State"<sup>56</sup>. They also noted that "**Homophobia from the State is a set of actions and omissions that tend to deny equalities of rights to people because of their sexual orientation or gender identity.** A state is homophobic when it directly attacks the people by laws, with police, insults or other means of verbal and physical aggression and with the non-legislation for equal rights. We condemn the PSUV, the National Assembly, the Supreme Court, the Public Ministry and all agencies of the executive as violators of Human Rights and particularly as a homophobic and transphobic State"<sup>57</sup>. (Emphasis added). They also said: "For years the government has said it defends the LGBTI community, while in practice we see how deputies who identify with the ruling party attack us (...). **Venezuela is in arrears with legislation to protect the rights of the LGBTI community.** In much of Latin America, they have taken important steps in this direction"<sup>58</sup>. (Emphasis added). A leader of the political party Movimiento al Socialismo noted that "... the deputy Pedro Carreño with his homophobic, scatological claims raises a pattern known as homophobia or transphobia of State, characterized by the actions or omissions that tend to deny equality right to people for their sexual orientation or gender identity."<sup>59</sup> He warned that such conduct was not only Carreño, but also of President Nicolas Maduro "who took a similar position in the past when he spoke in a derogatory to homosexuals, producing a very strong immediate reaction from civil society groups who joined this sector, forcing Maduro to publicly recant"<sup>60</sup>. " Also, a spokesman for the opposition party Voluntad Popular said: "**Such behavior now expressed in the National Assembly, is called homophobia of State** and this has been a repetitive conduct by the ruling party. These messages dehumanize the status of homosexuals and transgender"<sup>61</sup> (emphasis added).

53. Between 2009 and 2013, other attacks from public personalities who incited homophobia were:

- a) The Executive Secretary of the Democratic Action Party, Henry Ramos: "... **it is not appropriate to go to the street and extol the virtues of homosexuality and lesbianism,**" "**That is an issue**

<sup>56</sup> Diario El Universal (2013). Tamara Adrian: We are facing a homophobic and transphobic State. Available at: <http://www.eluniversal.com/nacional-y-politica/130814/tamara-adrian-estamos-ante-un-estado-homofobico-y-transfobico>

<sup>57</sup> Ibid.

<sup>58</sup> PROVEA (2013). LGBTI community in Caracas says No to homophobia of State. Available at:

<http://www.derechos.org/ve/2013/08/22/la-comunidad-lgbti-en-caracas-responde-no-a-la-homofobia-de-estado/>

<sup>59</sup> Su Noticiero (2013). Armando Prado: Government Political Party has established a homophobia of State. Available at:

<http://sunoticiero.com/index.php/lara-not/20322-armando-prado-partido-de-gobierno-impone-homofobia-de-estado>

<sup>60</sup> Ibid.

<sup>61</sup> Globovisión (2013). Voluntad Popular: This behavior shown in the National Assembly is known as Homophobia of State. Available at:

<http://globovision.com/articulo/voluntad-popular-ese-comportamiento-expresado-en-la-asamblea-nacional-se-denomina-homofobia-de-estado>

**that should not be appointed, or exalted, or criticized. Those who are lesbian or gay, it is up to them ...**"<sup>62</sup> (emphasis added).

b) Cardinal Jorge Urosa Sabino of the Venezuelan Catholic Church: "... **gay marriages are a negative current that has occurred in recent years in many parts of the world, it is bad to call marriage to a union between man and man or between a woman and another woman, because this has to do with the family, the procreation of children and the same sexual and physical reality of human beings**" (emphasis added). As for gay couples could adopt children, the cardinal said that goes against the same natural standards. In his opinion, "**this could cause great suffering to children in school, because his teammates would mock them when they know that their parents are of the same sex**"<sup>63</sup> (emphasis added).

c) The Chairman of the Miss Venezuela Organization<sup>64</sup> Osmel Sousa, also expressed about the possibility that transgender women to participate in beauty contests: "**Transsexuals can compete with other transsexuals. I personally think it would be disrespectful to the Venezuelan woman to put a transsexual to compete with her, then we should also put a woman in the Mister Venezuela to compete with a man**"<sup>65</sup> (emphasis added).

54. On May 17, 2014, it was held in Caracas the 3rd. Walk against Homophobia organized by Venezuela Diversa and Positivos en Colectivo, with a demonstration from Plaza Altamira Plaza Brion to Chacaíto, Chacao Municipality, where the attendants made an appeal to the government to protect the rights of LGBTI. Representatives of the NGO claimed that the Bolivarian Municipality of Libertador<sup>66</sup> forbade making the trek when denying them the permission to develop the march. Similarly, the Ministry of Popular Power for Women and Gender Equality, denied the logistical support for the stage and sound. They also reported that officials of the Ministry verbally expressed "**we do not support rightist and coup NGOs**". The mayor informed the NGO through a

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<sup>62</sup> Ramos Allup: "My psychiatrist told me that homophobic people were repressed homosexuals". Noticias 24. Available at: <http://www.noticias24.com/venezuela/noticia/187897/ramos-allup-a-mi-me-dijo-un-psiquiatra-que-los-homofobos-eran-homosexuales-reprimidos/>

<sup>63</sup> Cardenal Jorge Urosa: "Homosexual marriage is still an utopia in Venezuela". Available at:

<http://elaragueno.gesindoni.com.ve/region/articulo/2562/matrimonio-homosexual-sigue-siendo-una-utopia-en-venezuela>

<sup>64</sup> Miss Venezuela belongs to Organization Cisneros composed of private companies of media, entertainment, digital media, real estate, tourism developments and consumer products in the world, it offers brands and services to 550 million Spanish-speaking consumers and in the Americas and Europe and sells TV programming and other media content on five continents and in over 90 countries.

<sup>65</sup> Available at: <http://rayma.eluniversal.com/arte-y-entretenimiento/120425/osmel-sousa-el-pueblo-sencillo-no-va-a-aceptar-transexuales>

<sup>66</sup> Diario El Nacional. Gays, lesbians and transsexuals demand a stop to discrimination. Available at: [http://www.el-nacional.com/sociedad/Gays-lesbianas-transexuales-exigieron-discriminacion\\_0\\_410959001.html](http://www.el-nacional.com/sociedad/Gays-lesbianas-transexuales-exigieron-discriminacion_0_410959001.html)

written communication that the application was not admissible because it coincided with the date and place requested to another activity required in advance.<sup>67</sup>

## RECOMMENDATIONS

55. In order to ensure the protection of LGBTI people in Venezuela from discrimination and attacks on their moral, psychological or physical integrity, all public authorities and officials must strictly comply with the ban of issuing opinions, speeches or messages, or engaging in practices that may incite hatred, stigmatization or violence against LGBTI people because of their sexual orientation, gender identity and expression; as it is imperative that the State implements policies and communicational and educational programs from secular, scientific and gender perspectives aimed at promoting equality and non-discrimination of LGBTI people.

### V. PROTECTION OF SAME SEX COUPLES AND FAMILIES (Article 23.1)

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56. In Venezuela, **there is no legal protection for couples and families made up of people of the same sex**. Resolution No. 190 of the Supreme Court in 2008, mentioned earlier, said the AN is responsible for legislation on the protection of same-sex couples. However, to date, it has not been in the AN any initiative on the part of any deputy to legislate in this regard, although the NGO's working on sexual diversity matters have delivered several requests to the legislature.
57. Besides the legislative proposal of February 22, 2011, made by the LGBTI Network of Venezuela, which proposed to the NA the **recognition of the economic rights of same-sex couples in equal conditions and with no discrimination** in relation with opposite-sex couples, through the amendment of **three articles of the Civil Registry Law**; on May 22, 2013, the NGO Affirmative Unión Afirmativa de Venezuela requested the right to speak in the Committee on Domestic Policy of the National Assembly to request the reform of article 44 of the Civil Code of Venezuela, to permit marriage of same-sex people, a right that the aforementioned Article denies, stating that: **"Marriage cannot be contracted but between one man and one woman. The law shall not recognize another marriage contracted in Venezuela but that which is regulated by this Title, the only that will produce legal effects, both in terms of people and in respect of the goods"**.

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<sup>67</sup> Venezuela Diversa (2014). Available at <http://venezueladiversaac.blogspot.com/2014/05/alcaldes-de-libertador-y-chacao-violan.html>

58. Similarly, Unión Afirmativa de Venezuela informed the Commission that they would deliver a bill partially amending the Civil Code. Verbally, Members of the Commission expressed its readiness to receive and discuss any project emanated from the "People Power". Finally, on January 31, 2014, the NGO Venezuela Igualitaria along with other NGOs, social movements and LGBTI groups of all political preferences handed to the AN a proposal for Equal Civil Marriage<sup>68</sup> that includes the aforementioned partial amendment of the Civil Code, endorsed by more than 21,000 signatures of citizens, and more than 47 civil society human rights organizations. Members of the NA Elvis Amoroso, Odalis Monzon and Alejandra Benitez from PSUV, with opposition deputies received on their hands this project<sup>69</sup>. LGBTI people massively attended a public rally at the gates of the Venezuelan Parliament<sup>70</sup> as a sign of support for this important project. The signatures were collected in a voluntary process of broad citizen participation in all regions of the country for seven months, from June 2013 to January 2014.
59. As a result of the right to speak in the National Assembly, granted to members of the Civil Association Venezuela Igualitaria and Ejercito Emancipator of the Great Patriotic Pole, close to the government party<sup>71</sup>, on July 17, 2014 the vice president of the Committee for Internal Policy of the AN, José Javier Morales, appointed deputy Modesto Ruiz as Chairman of the Subcommittee to **discuss the Draft of Civil Law of Equal Marriage**. The media said: **"The deputy Ruiz estimated, by the end of July, to prepare an agenda of forums and discussion groups to enable them to different groups to discuss the essence of this struggle and be able to address the issue with the necessary knowledge to make decisions"**. Organizations that consigned the Project of Equal Marriage Act do not know if these activities were carried out. Particular attention should be given to reasons by some deputies of both political fractions represented in the National Assembly for not addressing this issue, since in several of their participations and public demonstrations prevail the allegations related to their different religious beliefs. This argument contradicts and **violates the provisions of Article 59 of the CRBV which states that "no one may invoke religious beliefs to evade compliance with the law."**

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<sup>68</sup> Available at: <https://es.scribd.com/doc/194454348/Proyecto-de-Ley-de-Matrimonio-Civil-Igualitario-Venezuela>

<sup>69</sup> Globovisión (2014). Available at: <http://www.accsi.org.ve/noticias/diputados-recipientes-proyecto-de-ley-de-matrimonio-igualitario-se-presentara-en-plenaria.html>

<sup>70</sup> Noticias 24.com (2011). Available at <http://www.noticias24.com/venezuela/noticia/219962/hoy-consignaran-en-la-an-proyecto-de-ley-de-matrimonio-igualitario-legalizaria-la-union-entre-homosexuales/>; Diario El Nacional (2011). Available at: [http://www.el-nacional.com/politica/ONG-presentan-matrimonio-homosexual-Venezuela\\_0\\_347365434.html](http://www.el-nacional.com/politica/ONG-presentan-matrimonio-homosexual-Venezuela_0_347365434.html); Video available at <http://www.youtube.com/watch?v=G-evM50-3fs&feature=share>

<sup>71</sup> AVN (17 de julio 2014). "National Assembly designated sub commission for discussing project of Civil Equal Marriage." Available at: <http://www.avn.info.ve/contenido/asamblea-designa-subcomision-para-tratar-proyecto-ley-matrimonio-civil-igualitario> Consulted on October, 2014; ACCSI (2014). Available at: <http://www.accsi.org.ve/noticias/asamblea-nacional-designo-subcomision-para-tratar-proyecto-ley-de-matrimonio-civil-igualitario.html>

60. This non-recognition and therefore lack of legal protection of families of same sex with Venezuelan nationality have serious consequences in their daily lives. Such is the case of couples who have decided to marry in countries like Argentina or Spain, who come to our country to lose the civil status, since their union is not recognized by the Venezuelan State. For example, the CNE through Resolution No. CRCE/2012-02, dismissed the appeal exercised by the Venezuelan Jesus Ravelo against the administrative act contained in the letter number ONRC/035/2011 issued by the National Office of Civil Registration dated January 25, 2011, whereby the insertion in the books of the Civil Registry of the Bolivarian Republic of Venezuela, of the marriage contracted in the Netherlands with a person of that nation, citizen Oliver Schnider<sup>72</sup> is denied. A similar case is that of Ginyveth Soto Quintana and Migdely Miranda, who on Monday December 16, 2013 went to the Principal Registry Office of the Libertador municipality of Caracas, to insert the act of marriage formally concluded with the authorities of the Republic of Argentina, according to the Organic Law of Civil Registry, specifically Articles 115 and 116. In response to this request, representatives of the agency responded that based on Article 77 of the CRBV and Article 44 of the Civil Code , this procedure could not be performed.<sup>73</sup>
61. Similarly, there are **cases of Venezuelan couples who have chosen to turn to methods of conception through assisted reproduction**, either using eggs from two mothers, through the donation of embryos or in vitro conception, in order to conceive children. Such are the cases of two female couples Nancy Aguilera and Patricia Arenas, Giniveth Soto and Migdely Miranda, and a couple of Venezuelan men Jhonnie Garcia and Antonio Torrealba. The Nancy Aguilera and Patricia Arenas is considered "the first case, at least publicly, of a lesbian couple in Venezuela who conceives a child through assisted fertilization".<sup>74</sup>
62. The case of Giniveth Soto and Migdely Miranda, happened after their marriage in Argentina: "On their return to Venezuela, Giniveth donated an egg to make it artificially inseminated and placed in the womb of her wife, to create a closer link between them and the baby". The couple said that they "analyze the option of self-exile, we'll go to Argentina to have him, we want him to have both last names, if here our marriage is not legalized. In the absence of equal marriage and regulations

<sup>72</sup> CNE (December 7, 2012) Electoral Gazette of the Bolivarian Republic of Venezuela. Available in [http://www.cne.gob.ve/web/gaceta\\_electoral/gaceta\\_electoral\\_detallado.php?tg=1&num\\_gac=660](http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=660) Consulted on 21-10-2014

<sup>73</sup> Available at: <http://www.inoutpost.com/noticias-LGBT/registro-civil-de-caracas-niega-a-pareja-de-lesbianas-insercion-de-matrimonio-celebrado-en-argentina-20131217170602.html> Consulted on 21-10-2014.

<sup>74</sup> Diario Últimas Noticias. (22-9-2011) Lesbian couple concibes baby in vitro. Available at: <http://www.ultimasnoticias.com.ve/noticias/ciudad/salud/pareja-lesbiana-venezolana-concibe-bebe-in-vitro.aspx> Consulted on 21-10-2014

to assisted motherhood in Venezuela, the only one that would be recognized as the mother of their son would be her partner because she is the one who is pregnant".<sup>75</sup>

63. Likewise, Jhonnie Garcia and Antonio Torrealba, became parents in December 2013 in Venezuela. Triplets born through surrogate womb. The couple says that "Despite being victims of discrimination and homophobia by deciding to be parents, they have received the unconditional support of their family and friends." In June 2014, they were married in New York "formalizing their commitment, which could not be fulfilled in Venezuela due to the lack of laws to protect the homosexual families and they expect the National Assembly to discuss and adopt the draft law on Civil Equal Marriage to be able to do it one day in their country"<sup>76</sup>". The children of these couples, at birth, or even those who are adopted, are born or brought into a new home in a legal limbo for only parenthood of one of the partners is recognized and not to both parents.

## RECOMMENDATIONS

64. With the purpose of the enjoyment and exercise non-discriminatory, indivisible and interdependent of all human rights, it is necessary for the Venezuelan State to **provide legislative, administrative and judicial developments in the protection of LGBTI couples, their families and their children;** especially with regard to legal recognition of unions, the rights of spouses and the legal status of children and adolescents of same-sex families.

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<sup>75</sup> Vanguardia. (February 1, 2014). A Bill for Homosexual marriage is introduced in Venezuela. Available at: <http://www.vanguardia.com/actualidad/mundo/244717-presentan-proyecto-de-ley-sobre-matrimonio-homosexual-en-venezuela> Consulted on 21-10-2014.

<sup>76</sup> InOutPost. (July 20, 2014) Emotional story of gay parents with triplets. Available at <http://www.inoutpost.com/noticias-usuarios/emotiva-historia-de-padres-gays-con-hijos-trillizos-20140720200339.html> Consulted on 21-10-2014.

## **ANNEXES**

Cases of murder, attacks and threats are available in the attachments of the report, including the links where the sources are published at the consulted information sources.