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INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION

*SHADOW REPORT*

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## **Costa Rica**

### **Violations of the Human Rights of Lesbian, Gay, Bisexual, Transgender, Transvestites, and Intersex (LGBTTI) People. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

#### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

#### **Committee Against Torture 40th Session (28 April - 16 May 2008)**

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## **Introduction**

The Republic of Costa Rica ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on November 11, 1993 and the Optional Protocol on December 1, 2005. Its initial report<sup>1</sup> was considered by the Committee Against Torture at the 26<sup>th</sup> Session, between April 30 and May 18, 2001, which adopted the respective concluding observations on May 17, 2001.<sup>2</sup> During the 40<sup>th</sup> Session in May 2008, the Committee's agenda includes the consideration of Costa Rica's State Party Report, presented on May 30, 2006<sup>3</sup> to fulfill its obligations under article 19 of the Convention.

This Report is an attempt to provide The Honorable Committee with the information and assessment of the situation of gay, lesbian, bisexual, transgender, transvestite and intersex people (hereinafter "GLBTTI people" or "sexual minorities") residing in Costa Rica, with regards to their suffering or their risk of suffering torture and cruel, inhuman or degrading treatment or punishment because of the discrimination that they face as sexual minorities. We desire that these materials will enrich the Committee's evaluation, will contribute to the complete elimination of torture, inhuman or degrading treatment or punishment, and will consequently improve the lives of all people residing in the Republic of Costa Rica.

### **Note in the English version of the report on the term *travesti*:**

The Spanish term *travesti* has been used by many activists across Latin America to identify themselves. A travesti is a person identified as a man at birth, who later chooses to identify as a woman. A travesti may or may not wish to undergo so-called "sex re-assignment surgery." Certainly, however, she will wish to adjust her appearance to her inner image, whether through dress, hormone therapy, or silicone prosthesis. The travesti adopts a female name and lives full-time in the gender of her choice. Most activists consider travesti a gender in itself: they claim to be neither women nor men, but, as travestis, to possess an identity they have constructed for themselves. Travesti is a less comprehensive term in Spanish than "transgender" is in English, as it applies only to a portion of the wider transgender population. Being travesti or transgender immediately confronts the opposition of the State. In most countries, it is illegal for travestis or transgender people to change their government-issued IDs and other papers to reflect the gender they have assumed. This disparity between their appearance and their official identification creates innumerable legal and social problems. It makes it difficult or impossible for them to hold jobs, rent apartments, open bank accounts, drive, and travel. Travestis are forced into a shadow realm of illegality. The State divests them of civic personhood. State refusal to recognize travestis makes them vulnerable to severe human rights violations.

## **Summary**

The Republic of Costa Rica has a tradition of both democracy and a history of respect for its inhabitants' rights and fundamental freedoms. As proof of this, it has ratified the main international and regional treaties and conventions, and has given supremacy to international law over domestic law.<sup>4</sup> Regarding human rights, the Constitutional Court—with the decisions 3435-92; 5759-93 and 2323-95 and in compliance with the article 48 of the Political Constitution—has established that: *“Human Rights instruments in force in Costa Rica not only have similar status to the Constitution but also, insofar as they grant greater rights or guarantees to people, take precedence over the Constitution”*.<sup>5</sup> Article 7 of the Constitution establishes that international treaties, conventions and public agreements ratified by the legislature take precedence over domestic law.<sup>6</sup>

As with any democratic system, each branch that forms the State—the executive, legislative and judicial powers—plays a fundamental role in the task of promoting and ensuring equal enjoyment of rights and privileges for all the territory's inhabitants, without discrimination. The legislative system supports this mandate, but its codes and laws are not sufficient in and of themselves to guarantee it. The executive power, through its policies and plans, and the judiciary, with its decisions, must also be engaged in putting them into practice. As well, this rule of law should be reflected effectively and concretely in the media and general social practices, just as it should be in government actions. In this sense, the legislation improvements that have been made would be thwarted if they were not accompanied by a comprehensive perspective, accounting for the diversity and characteristics of people, together with the gradual eradication of prejudices, myths, religious missions, intolerance, and other forms of irrational hatred still present in Costa Rican culture.

Costa Rica has a multicultural and ethnically diverse population and in the numerous international treaties ratified by the State the non—discrimination principle is promulgated and promoted as a basic and indispensable principle to the equitable enjoyment of civil, political, economic social and cultural rights. However, the State has still not managed to eliminate its discriminatory practices and communications. GLBTTI people are targeted by them on account of their sexual orientation and/or gender identity. This discrimination is made worse, then, when it takes place on multiple grounds including race, ethnicity,

nationality, social and economic status, sex, disability, and employment status. Marginalization and invisibility of minorities and their characteristics, as much in domestic laws as in public policies, programs and various other government actions can lead to torture and maltreatment of such people.<sup>7</sup>

Costa Rica has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has incorporated it into domestic law with Law No. 7351 on November 11, 1993. It has also ratified the Optional Protocol and has incorporated it by the Law No. 8459 on December 1, 2005. At the request of the executive government, the “Defensoría de los Habitantes” (an equivalent to the Ombudsman Office), was formed in the National Organization for the Prevention of Torture, responsible for inspections to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>8</sup>

In its General Comment No. 2 about the implementation of article 2 by the State Parties,<sup>9</sup> the Committee Against Torture identified the close relation between torture and discrimination. *“The principle of non-discrimination is a basic and general principle in the protection of Human Rights and fundamental to the interpretation and application of the Convention. Non-discrimination is included within the definition of torture itself in article 1, paragraph 1, of the Convention, which explicitly prohibits specified acts when carried out for ‘any reason based on discrimination of any kind’ [emphasis added]. The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.”*<sup>10</sup> In addition, in the Concluding Observations related to the Costa Rica Initial Report,<sup>11</sup> the Committee expressed concerns with the following:

- The inadequacy of training related to the prohibition of torture for police officers and prison personnel.
- The cases of abuse of authority by police officers and prison personnel.
- The overpopulation of prisons, which has led to overcrowding.
- The absence of statistical data on cases of abuse of authority, as well as the results of the investigations conducted in such cases, and the consequences for the victims in terms of redress and compensation.

Indeed, it can be asserted that before, during, and after the 2002-2005 period reported by the State Party, GLBTTI people in Costa Rica, among other discriminated minorities, have suffered and continue suffering cruel treatment and torture, through:

- Physical and mental violence by police and prison personnel.
- Abuse of authority and extortion by police
- Arbitrary arrests.
- Abuse, violations and cruel treatment that have taken place during the actions mentioned above.
- Lack of sanitary conditions in police lockups and detention centers.
- Lack of protection in situations of domestic, workplace, institutional and social violence or maltreatment, as the result of neglectful attitudes of police personnel or judicial officers before a complaint.
- Absence of investigations into complaints. Improper investigation of cases involving violence, cruel treatment, and homicides.
- Lack of application of criminal justice proceedings to public officials when they are suspected of having committed acts of torture or maltreatment.
- Absence of legal redress for victims of torture and maltreatment.

Moreover, both in private and public spheres, GLBTTI people have suffered and are still suffering torture and maltreatment because of:

- Stigmatization, invisibility, and segregation in society.
- Mental and/or physical violence and/or cruel or degrading treatment in the home, education, labor, and health systems, and through the mass media.

Rights violations by torture and maltreatment, is a penalty that society imposes on bodies and psyches of those whose practices and/or speech and/or identities are not in accordance with the homogenous, static, and strict schemes society uses to classify its members. *“Torture is an extreme but widespread means for regulating sexuality, and enforcing gender norms. When norms stipulating what human beings can do with their bodies are violated, the retaliation is particularly likely to be in bodily terms. Those asserting their bodily control and sexual autonomy—core claims that sexual minorities, by their very existence, make—may therefore be particularly likely to face punishment in the form of physical abuse, rape, and other forms of torture.”*<sup>12</sup>

In Costa Rican law, sexual orientation or gender identity are not mentioned, with the exception of the general law of HIV/AIDS No. 7771, in articles 45 and 48. It is important to recognize that the effective protection of rights and fundamental freedoms requires broad as well as specific policies that allow for vulnerable minorities' social integration; That is to say, *“to the values of the universality and of the indivisibility of Human Rights, one must add the value of the diversity”*<sup>13</sup> and *“the specification of Legal Persons [subjects of rights] must be added.”* Because of the protection and promulgation of Human Rights work, *“it has become insufficient to consider people in a generic, general and abstract way, and the Legal Person specification has become necessary, [and] is to be considered in (...) [its] particularity. From this point of view, (...) certain rights violations demand a specific and differentiated answer (...) taking into account the respect for difference and diversity.”*<sup>14</sup>

Costa Rican GLBTTI people continue facing torture and inhuman and degrading treatment because of the discrimination and exclusion exerted by the State and other sectors of the society. Such discrimination is exerted on the basis of homogeneity and standardization of characteristics, attributes, and desires of the population. This scheme is maintained by prejudice, hatred, fanaticism, and moral arguments against those whose gender identity or expression, sexual orientation or practices do not fit within heteronormative and patriarchal traditions. This construction of the gender binary depends on gender-role stereotypes. Therefore, it does not acknowledge diverse sexualities and gender identities.

Discrimination against GLBTTI people present in social practices and dialogue that translates into stigmatization, invisibility, social rejection, segregation, financial limitations, harassment, sexual abuse, poor healthcare, unemployment, police abuse, indifference and negligence of judges and government officials, and physical and psychological violence. The obstacles and abuse faced by GLBTTI people include murder, and these lesser abuses can still drive people to suicide.<sup>15</sup> Although each one of these abuses implies, to a greater or lesser extent, maltreatment, degrading and/or cruel treatment and/or torture, Costa Rica does not regard them as such, and to make them invisible or to deny GLBTTI people their human rights.

In compliance with international commitments made when ratifying international human rights treaties Costa Rica should reconsider its conception of equality implicit in its legislation and public policies, to incorporate a more nuanced conception of equality as in<sup>16</sup> international and Inter—American law. This conception should include, a) *formal equality*, arising from

the statement that "everybody is equal before the law"; b) *substantive equality* that corresponds to the idea of distributive social justice; and c) the *material equality* that corresponds to the ideal of justice as the recognition of identities (equality in regards to gender, sexual orientation, age, race, ethnic group and other criteria).<sup>17</sup>

In order to comply with the Convention and to secure the outcomes it envisions, Costa Rica must also act with "due process," to prevent, investigate, punish, and redress torture actions and/or ill treatment within its jurisdiction, taking account that *"the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or maltreatment. State Parties must ensure that, insofar as the obligations arising from the Convention are concerned, their laws are in practice applied to all people, regardless of race, color, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including those accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection, or any other status or adverse distinction. States Parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above."*<sup>18</sup>

Currently, Costa Rica is in violation of articles 1, 2, 10, 11, 12, 13, 14, and 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in its treatment of Costa Rican GLBTTI people. To bring itself into compliance with the Convention, at minimum Costa Rica must:

- Recognize and implement the treaty's definition of torture and cruel, inhuman, and degrading treatment or punishment, particularly in cases of torture of GLBTTI people.
- Take effective measures to prevent torture and cruel, inhuman, or degrading treatment or punishment of GLBTTI people.
- Educate all government agents who may be involved in the detention of people about the prohibition on torture for all people, including GLBTTI people.
- Prevent the torture of GLBTTI prisoners.
- Conduct impartial investigations of suspected torture of GLBTTI people.

- Ensure all GLBTTI people have the right to present a complaint of torture.
- Provide redress and compensation for GLBTTI victims of torture.
- Undertake to prevent cruel, inhuman, and degrading treatment or punishment of GLBTTI people in its jurisdiction.

As such, Costa Rica should implement the programs, policies, measures, reforms, and processes outlined in this report to ensure that the human rights of all people, including GLBTTI people are respected.

## **Violations of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

### **Article 1: Definition of Torture**

Although Costa Rica has a legislative framework of protection and respect for fundamental human rights and freedoms *"which guarantee[s] the full equality of rights without discriminations of any kind,"*<sup>19</sup> this legal status is not enjoyed by all people. Such legislation is frequently ignored and its interpretation and application by the judiciary or by public order officials is subject to moral and religious prejudices and ideological fanaticisms, which are still present in Costa Rican culture.

Costa Rica has penalized torture and maltreatment through article 123 of the Criminal Code<sup>20</sup> and the Constitution guarantees equality before the law,<sup>21</sup> the right to physical and moral integrity, and the right to not be tortured.<sup>22</sup> However, this norm does not find actual application in all cases equally. GLBTTI people continue to face maltreatment and torture for *"reasons based on discrimination."* They are targeted because of their sexual orientation, sexual practices and gender expression or identity.<sup>23</sup> These substantive differences under the law, discrimination, and invisibility *"are still present in several domestic laws, such as administrative or internal regulations of some institutions."*<sup>24</sup>

Sexual orientation and the expression or gender identity are essential categories of the human person that are not specified in Costa Rican laws, with the exception of articles 4, 5 and 48 of the General Law on HIV/AIDS.<sup>25</sup> The State fails to recognize in a meaningful way, the existence of diversity in gender and sexuality and does not recognize that these categories do, in fact, face irrational hatred, stigma, and discrimination, as well as torture and maltreatment. This omission leaves GLBTTI people in a vulnerability position because it facilitates unequal

application of the law by judges and police personnel, who frequently act on the basis of moral and religious prejudice.

Those manifestations of sexual orientation and gender identity that transgress norms are characterized by the majority as "attacks to the moral", "public scandal"<sup>26</sup> and, in general, are cruelly punished, as much by civil population as by agents of public order. Article 382 of the Penal Code, which punishes sodomy that occurs "in scandalous way", constitutes an example of a discriminatory measure, that is characterized by vagueness. For this reason it is contrary to the right to privacy in the context of consensual sexual relations between adults of the same sex. This lack of clarity results in a great discretionary power of police and judges, who interpret and apply law in an arbitrary way, according to their own discriminatory prejudices.

**Therefore, Costa Rican State is not in compliance with the commitments made by ratifying the Convention, as it does not regard the actions and situations described above that infringe upon the integrity and the dignity of GLBTTI people in the light of the definition of torture contained in article 1.**

We ask the Honorable Committee against Torture to encourage and recommend that Costa Rica:

1. Specify in the Political Constitution and in the rest of its laws, codes, statutes, regulations, and norms in force, non-discrimination grounds, such as gender identity and sexual orientation, in order that people who might face discrimination on these grounds have equal status before the law.
2. Revise the understanding of the problematic nature of torture among government officials, in the light of the Convention and the country's domestic laws.
3. Eliminate article 382 of the Penal Code which criminalizes a sexual practice that—in and of itself—does not harm the adults engaging in it in a consensual manner, and which infringes upon the integrity of people and their right to privacy—of the GLBTTI community, in particular.

**Article 2: Legislative, Administrative, Judicial, Institutional or Other measures that must be taken to prevent torture**

Although during the last thirty years, there have been achievements in the recognition of rights of lesbians, gays, bisexuals, transvestites and transgender people in Costa Rican legislation and jurisprudence,<sup>27</sup> there have also been obstacles and limitations in the state laws and policies that prevent an effective protection of GLBTTI people from situations of torture, when they are deprived of their rights and fundamental freedoms. We can enumerate the following rights violations:

### **Arbitrary arrests and abuse of authority**

From the year 2000 to present, the Defensoría has been constantly receiving complaints against police lodged by travesties; they have alleged arbitrary arrest, degrading treatment, extortion, and physical and psychological aggressions. For example,

- Between March and June 2000, twenty travesties alleged arbitrary arrest and harassment, while at Municipal Police Stations #11 and #12. They report that they were asked to pay in exchange for their freedom, and that they were beaten and insulted too.<sup>28</sup> On December 8, 2000 seventeen travesties accused that they had been arbitrarily arrested, beaten, and maltreated.<sup>29</sup>
- In June 2002, two complaints were made by travestis, one arrested in central Alajuela and the other one near the La Dolorosa area in San Jose. Both alleged aggression and arbitrary arrest. The places where these arrests occurred are known for prostitution.<sup>30</sup>
- In 2003, The Defensoría began an investigation based on two complaints filed by travesties for alleged arbitrary arrest, compounded by degrading treatment and aggression at detention centers, particularly the Alajuela Police Station and the Fifth Precinct in San Jose.<sup>31</sup>
- During 2004 The Defensoría received repeated complaints from travesties of alleged arbitrary arrest, physical and psychological aggressions and inhuman detention conditions.<sup>32</sup> The complaints against police treatment were lodged by people who usually work in San José, Heredia, Alajuela y Cartago.<sup>33</sup>
- In May 2005, the travesti called Mairena, who had custody of a 10 year-old child, was detained after being accused of theft against an American tourist. After making a statement, Mairena was released and then announced through the media that she was victim of a false accusation. “*There are people that could not accept that,*” she said, referring to her having the custody of the child.<sup>34</sup>

Although less frequently than in the 1990s, police are still patrolling the areas of the city where GLBTTI meet and socialize, and operate arbitrary arrests, alleging the presumption of theft or drug trafficking or using equivocal legal terms such as “public scandal.”<sup>35</sup> With even more frequency, the police patrol the areas in the city known for travesti and transgender people, and employ similar arguments for arbitrary arrest. Several reports and witnesses document that, usually, GLBTTI people regain their freedom after suffering physical and verbal aggressions, robbery, rapes and extortion.<sup>36</sup>

In places of detention—with the exception of the cells of the Judicial Investigation Authority—GLBTTI people are locked up with other prisoners, sometimes putting them at high risk. Sexual abuse and physical violence against GLBTTI people in prisons are common, by police personnel and by other prisoners, with the tacit consent of the authorities in charge. When GLBTTI people are taken to the detention centers of the Municipal Police or the Public Security Ministry, they frequently remain isolated for at least twenty-four hours. They are informed of their detainee rights only at the Judicial Investigation Authority, where they can contact a lawyer and relatives.

In its Concluding Observations of November 16, 2007,<sup>37</sup> the Human Rights Committee (HRC) has reiterated to Costa Rica its concern “*regarding the excessive duration of pretrial detention (...), and regarding the legally authorized regime of incommunicado detention (...).*” The Committee has expressed also that “*the situation of people held incommunicado was unclear to the Committee, as was the procedure for judicial inspection, particularly in view of the potential inconsistency between articles 37 and 44 of the Constitution.*”

### **Right to life violations<sup>38</sup>**

GLBTTI individuals have and have had their right to life<sup>39</sup> violated through systematic discrimination and hate, that has led to violent attacks and killings and which generate deep fear of such violence, particularly among travesties. In the past years, they have become the target of homicides and rough aggression, especially in San José city.<sup>40</sup>

For example:

- On July 9, 2001; Jason Orlando Muñoz Zúñiga, age nineteen, who, as the report states, “was dressed as a transvestite at the time of his death”, was killed by a shotgun fired

by someone driving a pick-up truck while it was crossing in front of Clinica Biblia, the largest private hospital in San José.<sup>41</sup> Neither the Police nor the Judicial Investigation Authority have come up with more information about the case.

- Andrés Manuel Sanchez Molina, a 25 year-old travesti who was working in San José, was killed by six shotguns, fired by a motorcyclist couple, wearing dark clothes and helmets. The episode took place at night and near the García Flamenco School, in the neighborhoods of the Biblical Clinic, in the city of San José. During the 2003, the police registered three other cases of transvestites that were hurt in San José. The Judicial Investigation Authority has not related the attack on Sanchez Molina to the previous ones.<sup>42</sup>
- At the beginning of 2003, CIPAC stated that several travesties were shot at by groups of transphobic youth that were never identified, in San José streets.<sup>43</sup>
- “Paola,” a Nicaraguan travesti, was killed by 3 stab wounds at dawn on September 25, 2006. Apparently, the murder was committed by two or three individuals, after a brief argument. The criminal act took place in front of the Ministry of Culture, close to Spain and Morazán Parks; places which are ordinarily frequented by sexual workers. With this, there have been four cases of transvestites murdered in that area, during the last years, without known advances in the investigations on the part of the authorities assigned to solve them.<sup>44</sup>
- A transvestite identified as “Morelia”, was seriously stabbed on January 18, 2008. The episode occurred near Public Services and Transport Ministry in San José. Five individuals, trying to take revenge on a different travesti, were involved and Morelia (W. Esquivel Reyes) was the one who finally received the two knife wounds and was carried to the Calderon Hospital Guard, badly injured.<sup>45</sup>

**These facts show that the State is not fulfilling Article 2 of the Convention, because it has not taken effective legislative, administrative, judicial or other measures to prevent acts of torture in the whole territory under its jurisdiction, and to guarantee that those responsible for these acts are brought to justice. Also, the state does not fulfill Article 11, since there are not adequate controls and review mechanisms of proceedings, attributions, and responsibilities, with regards to police conduct and the actions of other public officials.**

Thus, we ask the Honorable Committee against Torture to encourage and recommend Costa Rica to:

1. Increase its determination to implement the necessary actions in order to guarantee the fulfillment of article 2 of the Convention, so that it would be reflected throughout its programs, plans and public policies.
2. Proceed to carry out the reform or the elimination of those laws, codes, rules and decrees that are discriminatory or in contradiction with the Convention principles or with any other international instrument ratified by Costa Rica.
3. Guarantee through administrative, judicial and public policies the non-discrimination principle for GLBTTI people, according to the domestic and international Law in force, in both public and private spheres. In the same sense, to implement Committee General Observations No. 2, particularly those that refer to vulnerable groups' protection.<sup>46</sup>
4. Carry out the necessary reforms in legislative, executive, and judicial fields, in order to enable the State to fulfill its obligation of acting with effective "due process." All this must occur in order to promote and guarantee the enjoyment of fundamental rights and freedoms for all people equally as well as to encourage legitimacy in the government, particularly for GLBTTI people who have suffered torture and /or cruel, inhuman or degrading treatment.
5. Take up a detailed examination of judicial mechanisms and procedures, in order to guarantee GLBTTI people rights protection within legislative, administrative and judicial reforms and to promote the elimination of those rules, statuses, and expressions that--in an explicit or tacit manner--criminalize or tend to criminalize gender reassignment, gender expression, sexual orientation, as well as sexual work.

#### **Article 10: Education on Prohibition of Torture**

The Costa Rica State Party report states that the Police National School provides training, taking into account a "civic, democratic and human rights' perspective."<sup>47</sup> The training that prison personnel and police officers are given includes courses and seminars about the Political Constitution, jurisprudence, and human rights, among other topics.<sup>48</sup> However, as is evident through the testimonies and reports relating to articles 2, 11, 12 and 16 stated here,

such training is insufficient. There is a high percentage of security agents that express into discriminatory attitudes and treatment, far from a human and civil rights' perspective, that leads them to commit cruel treatment, such as torture, habitually. Judges and other members of the judiciary, as well as health workers and education officials, are not sufficiently understanding of the CAT, of other international human rights treaties and conventions, nor of the modifications produced by domestic law in the matter of human rights.

**Therefore, the State does not fulfill its obligations under article 10, since the capacity for avoiding and prohibiting torture is practically nonexistent. The contents of the courses and seminars that actually have taken place are not reflected in the performance of those agents and officers who have attended them. Also, a large part of the State institutions pertaining to health and education, among others, do not have suitable qualifications to allow officials to eliminate prejudices and discriminatory practices and ideologies towards GLBTTI people.**

Thus, we ask the Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Implement trainings, awareness workshops, and seminars on Human Rights, with a comprehensive perspective on gender diversity and sexual orientation, aimed at police forces, health agents, and education staff, as well as at those government officials that offer counseling services.
2. Implement, through the Public Security Ministry, a policy, continuously monitored and updated, to ensure that all police personnel will perform their duties in observance of human rights in general and the Convention in particular.
3. Update the human rights training of the judiciary, insisting on the importance of the knowledge and proper application of the provisions of CAT, as well as of other international and Inter-American treaties and conventions ratified by Costa Rica, emphasizing the correlation between torture, maltreatment, and discrimination.

#### **Article 11: Treatment of Prisoners**

In order to assess, control, and punish possible errors that could take place in the performance of agents and officers of the Public Security Ministry, the State has the Legal Disciplinary Department and the Services Controller (Contraloria de Servicios), both parts of the executive power. The latter is responsible for receiving complaints related to possible errors committed by officers of the Security Ministry, for conducting investigations, for making sure that specific procedures are followed (Instructivo de Procedimiento), and for forwarding the more serious cases for consideration by the Legal Disciplinary Department.<sup>49</sup>

### **Treatment during the arbitrary detentions:**

Because of constant abuse of authority by police resulting in many complaints by travesties, and because the investigations conducted generally did not support the complaints, the Defensoria made a series of recommendations to the Public Security Ministry. The National Police School Academy was recommended to “identify the training needs of police personnel in relation to non-discrimination”, and conduct training courses on the scope and limits of police actions, and on human rights.<sup>50</sup>

### **Detention places:**

Prison cells, dungeons, and penitentiary buildings where GLBTTI people are detained tend to be dangerous. According to several testimonies, they lack basic elements to take care of detainees’ hygiene and security. These places lack adequate cleaning service.<sup>51</sup> The Municipal Police Station cells are dirty, tiny, and usually host between 30 and 40 people. They are made of concrete cement, without blankets or mattresses where to rest and without running water or toilets.<sup>52</sup>

According to several testimonies, food, medicine, or medical assistance are not provided during detentions, except in the detention centers of the Judiciary Investigation Authority. Prisoners with special medical conditions for which a special diet or certain medication are required, such as diabetes, hypertension, or HIV/AIDS, are not provided with basic necessities to take care of their health.<sup>53</sup> There are testimonies of transvestites and gays who are HIV positive and were not administered their necessary medication while being deprived of freedom. The health care of those deprived of freedom constitutes one of the main issues on which the Defensoria receives the greatest amount of complaints.<sup>54</sup>

In successive inspection reports, the Defensoría has pointed out the stacked situation and the impairment conditions of some of those centers, such as the Centers of Institutional Attention of Puntarenas and Limon, as well as the Center of Institutional Attention La Reforma.<sup>55</sup> *“In the different inspections carried out to penitentiary centers, it has been proved that health care services are not in proper condition, medical personnel is insufficient, there are long waiting lists for people needing to be taken to hospitals or social security health centers, there is little control about the medicine provided to people deprived of freedom, and there is delay in delivering it.”*<sup>56</sup> The Human Rights Committee, in its Concluding Observations of November 16, 2007 related to Costa Rica, expressed its concern with the crowding and poor conditions of detention centers.<sup>57</sup>

Thus, we ask The Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Take the necessary actions in order to guarantee, in penitentiary centers and prisons, the basic conditions of hygiene, building safety, the regular provision of food, opportunities to rest, as well as adequate health care.
2. Implement, through the Public Security Ministry, a permanent monitoring program, aiming at the prevention of torture and other maltreatment by police. Likewise, promote cooperation between this Ministry, the Services Controller, and the Legal Disciplinary Department, in order to improve the mechanisms and procedures for the detection of crimes and the application of sanctions.
3. Introduce efficient mechanisms and procedures to oversee the performance of the judiciary, in order to eliminate abuse, excessive punishment, and failures to carry out its duties and responsibilities.

#### **Article 12: Impartial investigation of suspected torture**

Costa Rica has a legal framework that allows for the prosecution and punishment of acts of torture and inhuman treatment.<sup>58</sup> Nevertheless, there is no information about judiciary officers or police agents having been investigated or prosecuted for torture or cruel treatment toward GLBTTI people, although there is evidence to indicate such crimes. Judges and the control

agents, whose task it is to oversee public agents' performance, seem to underreport or fail to see the cruel conditions of detention, as well as the acts of torture and cruel treatment that take place in those circumstances. Also, they underreport harassment, authority abuse, violent aggression, and arbitrary detentions by police personnel in certain situations, such as when they patrol the places frequented by GLBTTI people.

In relation to article 2, from March to June 2000, twenty transvestites filed complaints with the Defensoría for arbitrary detentions and harassment while being led to the # 11 and # 12 Municipal Police Stations. In addition to this claim, transvestites alleged to have been persuaded to pay for their freedom, as well as having suffered physical and verbal aggressions. The Defensoría lawyers, who had a meeting with Public Security Ministry authorities right after those complaints, learned that no police member was investigated or detained because of illegal detentions or physical and verbal aggressions against transvestites.<sup>59</sup> From the year 2000 to present, the Defensoría have been receiving complaints for arbitrary detentions and maltreatment presented by transvestites. The numerous attacks and murders of transvestites in San José streets are not thoroughly investigated and, thus, remain without resolution, without anyone punished under the law.<sup>60</sup>

From 1997 to 2000, as many as fifteen deaths involving GLBTTI victims were reported each year. Advocacy groups suspect that those crimes were motivated by irrational hate and rejection. However, Judicial Investigation Authority, in charge of murder investigations, generally failed to consider discrimination as motive of the crime, though the characteristics of the cases allowed for such a hypothesis to be considered. Impunity related with most of those murders persists up to date.

The police system neither offers protection nor investigates when violence, torture or maltreatment are based on gender identity or sexual orientation. When the crime actually occurs, the judicial system offers insufficient mechanisms and resources related to investigation, judgment, and redress of the harm caused to the victim, and in regards to punishment for the crime.<sup>61</sup>

**Costa Rica State is not complying with article 12 because:**

- a) it fails in the identification and detention of those individuals suspected of torture and cruel, inhuman, or degrading treatment against GLBTTI people.**

- b) **the investigations of such events do not produce sufficient results, do not contribute to resolutions of the cases, and consequent penalization of criminals.**

Thus, we ask The Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Implement the necessary actions in order to optimize the mechanisms that take part in the investigation of acts of torture or other cruel, inhuman, or degrading treatment or punishment against GLBTTI people, so that it is possible to penalize them in proven cases, irrespective of whether the crimes were committed by government officials or private individuals.
2. Carry out the necessary policies so that police forces as well as members of the judiciary conduct, as part of their obligations and responsibilities, investigation of torture and/or cruel, inhuman or degrading treatment or punishment cases with GLBTTI victims.

### **Article 13: Right to present a complaint**

Costa Rica Law No. 7586 on Domestic Violence is in force; nevertheless it is usually not applied to GLBTTI relationships, including partners in same-sex relationships. Restraining orders stipulated under this law to protect victims' lives, could theoretically be applied, from a legal perspective, in all cases where the life and/or the individual's integrity is at risk because of possible violence from a partner. Unfortunately, this does not happen when such demands come from a gay man, a lesbian woman, a transvestite, an intersex person or a transgender person, since police agents and state officers minimize the abuse and disqualify such people. This therefore results in continued violence against the victim. Frequently, the allegations are not even registered. When such cases are brought to court, evidence-related procedures and the performance of judges ignore the gravity of the situation and leave the victim at serious risk.<sup>62</sup>

*“Kathia, a lesbian living in San José city, was violently attacked by her ex-partner with blows and threats of murder. Kathia called the police, who—after arriving quickly at the scene-- began laughing and mocking at them when they realized the abuse involved two women.”<sup>63</sup>*

Although police force members were witnesses of the maltreatment they had been called out for, they did not take on any other action in spite of the seriousness of the case.

Prejudice and social stigma, aimed at GLBTTI people, present in the legislation as much as in the spirit of its application, are the most powerful factors fuelling maltreatment and torture of GLBTTI people, as well as promoting impunity for such acts.<sup>64</sup>

In spite of what is expressed by article 40 of the Political Constitution as well as by the constitutional resources of “Habeas Corpus” and “Recurso de Amparo” (granting protection against imprisonment) *“as legal instruments to reestablish the individual’s enjoyment of all their rights,”*<sup>65</sup> GLBTTI people find obstacles to resort to them. A high percentage of gay, lesbian, bisexual, transvestite, intersex and transgender people tend not to file formal complaints in Courts when they have suffered maltreatment. They fear reprisals and re-victimization both in the course of following the legal procedures and from the sensationalist way in which media reports on their cases. The Defensoría de los Habitantes and the Courts therefore receive few complaints and take this as an indicator of absence of maltreatment and discrimination. In reality, this illustrates a lack of trust in the judiciary and criminal system,<sup>66</sup> the main institutions that could ameliorate and investigate such situations.

Homophobia, transphobia, and lesbophobia expressed by agents of public order, prevent these government officials from performing their duties. These duties include:

- The assistance of GLBTTI people in case of high-risk situations because of violence, torture, or threats of murder.<sup>67</sup>
- The recording and following up of accusations of torture or maltreatment situations that take place within homes, in GLBTTI couples or by their family.<sup>68</sup>
- The recording and prosecution of accusations because of torture and maltreatment committed against GLBTTI people by police and other government officials.<sup>69</sup>
- Properly responding to violence cases based on gender identity and/or sexual orientation, be it in domestic, labor, educational or health areas.<sup>70</sup>

**Consequently, the State is infringing on article 13, when not offering enough protection and credibility, so that GLBTTI people who have suffered torture, violence or maltreatment, cannot exert their right to file a complaint without fearing reprisals and maltreatment.**

Thus, we ask The Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Implement an awareness program with Public Security Ministry and other justice officials in order to eliminate discriminatory practices and attitudes which in and of themselves or by omission impede the proper registration and processing of complaints for violent actions, maltreatment, and torture suffered by GLBTTI people.
2. Develop special government teams, to include police with antidiscrimination training, able to respond to urgent complaints of maltreatment, and to record such complaints including when filed in relation to domestic and other family-related violence, workplace harassment, and sexual abuse suffered by GLBTTI people; such service should be conducted in good faith and take into account the protection of victims' integrity.

#### **Article 14: Compensation for victims**

As Costa Rica State does not carry out investigations properly to force those responsible for torture to face appropriate penalties, as is shown by testimonies and cases presented in relation to articles 2, 10, 11, 13 and 16. Therefore, the State is not acting with due process. The State therefore becomes an accomplice that contributes to re-victimizing the affected people, submitting them to a new degrading treatment by not recognizing them as victims and not punishing crimes; This also denies victims their right to obtain adequate remedies for the harm suffered, in spite of what is stipulated in Costa Rica's Political Constitution, in article 41.<sup>71</sup>

**In this way, the State is not fulfilling its Article 14 obligations, since it is neither enabling nor giving the victims of torture and maltreatment their right to obtain redress and a fair compensation, including the means for rehabilitation, because most cases fail to reach a resolution. Torturers therefore remain without sentence and the suffering of victims and their heirs rarely finds redress and compensation by the State.**

Thus, we ask The Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Guarantee the principle of equal treatment before the law for GLBTTI people in judicial and police procedures.
2. Carry out, as per the provisions of article 2 of the Convention on due process, the necessary reforms in the legislative, executive and judicial fields, in order to provide adequate redress to GLBTTI people who have suffered torture and/or maltreatment.

## **Article 16: Cruel, inhuman, and degrading treatment or punishment**

### **Maltreatment in health services**

In public and private health services, GLBTTI people are exposed to maltreatment. Transvestites and transgender people, because they cannot change their name on identity documents, are registered as the wrong sex for medical appointments, which constitutes psychological maltreatment. Frequently, healthcare staff refuses to provide them with medical care, despite the serious consequences for the patient.

In 2005 a transvestite alleged to have been discriminated against for being both a transvestite and a sex worker, when she sought emergency assistance with the San Juan de Dios Hospital.<sup>72</sup> Another woman reported maltreatment during a medical appointment, in which the physician disqualified the seriousness of her medical condition after learning that she was a lesbian.<sup>73</sup>

Since they are not officially recognized by the State, GLBTTI couples usually suffer degrading treatment in case of medical appointment or hospitalization. Health agents and professionals frequently disregard the relationship between the partners, so they deny the accompaniment and information rights corresponding to couples.<sup>74</sup>

Within the health care rights framework, sexual and reproductive rights are only specified in Costa Rica legislation through order 27913-5/99. In this matter, the Catholic Church strongly opposed the inclusion of those rights in the health law. GLBTTI people, as well as women and adolescents, are left without protection, being exposed to ill and degrading treatment situations in the health care context.<sup>75</sup>

## **Maltreatment in Education**

In Costa Rica, the educational system makes diverse sexual orientations, other than heterosexuality, invisible both through its human resources policies and the actual knowledge taught.<sup>76</sup> Teachers and principals react negatively when they detect GLBTTI students, regarded as abnormal and who could even be expelled from the institution.<sup>77</sup> There are testimonies of GLBTTI people who were denied access to scholarships in private universities based on their sexual orientation.<sup>78</sup> Teachers suffer discrimination by colleagues and principals, or even lose their employment. Primary and secondary education is the field with highest degree of rejection of GLBTTI teachers and students.<sup>79</sup>

Furthermore, sexual and gender diversity subjects are avoided in classrooms. On the occasion of a complaint submitted by the Executive Board of Human Rights Research and Promotion Centre for Central America (CIPAC/DDHH) on *"the presumed breach of the Costa Rican norms on the teaching of sexual education and HIV/AIDS in schools and colleges, by The Public Education Ministry, The Council of Childhood and Adolescence, the Health Ministry and the National Foundation on Childhood; as well as its application and fulfillment by the Public Education Ministry;"* in 2003 the Defensoría de los Habitantes carried out a research<sup>80</sup> on the Public Education Ministry policies related to sexual education, since sexual and reproductive rights issues had not been included in curricula, and no national plan included *"sex education among preventive and health promotion actions."*<sup>81</sup>

The Convention on the Rights of the Child (CRC) ratified by Costa Rica on August 21, 1990, affirms as inalienable the rights of children and adolescents to:

1. Receiving adequate information related to sexuality subjects, which include sexual and reproductive rights
2. Their own sexual orientation, as part of the right to identity.<sup>82</sup>

The fragmentation and censure of knowledge, as well as the policies which tend to make teaching personnel and students' gender diversity and sexual orientations invisible, involve maltreatment and psychological torture, not only against those GLBTTI students, teachers, and other school personnel, but also of GLBTTI parents. The myth of sexuality and gender identity based on anatomy and stereotyped gender roles rests on religious and ideological precepts, not anchored in reality, and disregards recent knowledge. Such an approach infringes upon children's and adolescents' rights and agency, since it conditions their perception of themselves and of their environment.

## **Maltreatment in the workplace**

In Costa Rica there is discrimination and unequal treatment in the field of labor. When the classic asymmetrical power conditions that take place on the basis of the hierarchy of functions and positions in the organizations, the asymmetry based on gender stereotypes is added, where women and GLBTTI people live in an unequal position compared to heterosexual men. The Law against “*sexual harassment in employment and teaching*” No. 7476<sup>83</sup> condemns “*the discrimination because of sex*”<sup>84</sup> and prohibits and sanctions “*sexual persuasion and harassment as discriminatory practices based on sex, against woman and man’s dignity, in teaching and work relations.*”<sup>85</sup> Mainly, this law tries to protect women from a narrow heterosexist perspective, which excludes GLBTTI people, failing to acknowledge discrimination on multiple grounds.

The asymmetry in labor relations makes discrimination, power abuse, and sexual harassment possible. GLBTTI people are more vulnerable when they differ from the majority also on account of their ethnicity, race, economic and social status, migrant status or under-age status. The State lays out little protection when facing labor discrimination. Various obstacles make the process of proving discrimination difficult, and therefore GLBTTI people do not enjoy their labor rights equally.<sup>86</sup>

There are several testimonies of lesbian women who have been ill treated and dismissed from their employments because of their sexual orientation. A field study by CIPAC/DDHH revealed that 39 percent of lesbians hide their sexual orientation at work and live under fear of being discovered.<sup>87</sup> Eleven percent of the lesbians who were interviewed mentioned having been dismissed at least once because of their sexual orientation. 90 per cent of transvestite youth is engaged in sex work because of difficulties they confront in finding work in offices or in factories.<sup>88</sup>

Failures in matters of labor legislation and the lack of procedural mechanisms that would give protection from discrimination based on sexual orientation and gender identity, make it possible for GLBTTI people to face degrading treatment and get them to be easily exposed to suffering verbal, psychological and physical violence, as well as sexual abuses from their work fellows as well as from employers or clients. Work conditions are inappropriate and degrading treatment is frequent in terms of pay, hygiene, and labor security; this violates the

Political Constitution.<sup>89</sup> However, if a person is dismissed because of their sexual orientation or gender identity, there is no legal framework to allow for a complaint.

In the period of 1998-1999 the "Asociación Triángulo Rosa" presented a complaint to Constitutional Court (Sala Constitucional), on behalf of a high school teacher, who had been dismissed because of his sexual orientation. A telephone recording was presented as evidence, in which the school administrator confirmed that the he was dismissed because of his sexual orientation, was not considered in court, which dismissed the case for lack of evidence. Another complaint by a professor who was dismissed because of her sexual orientation was presented before "Sala Constitucional IV", and received no favorable resolution either.<sup>90</sup>

**The State is failing to fulfill what has been established by article 16 of the Convention, since it has not taken the "legislative, administrative, judicial measures or of any other nature, to prevent and eliminate certain acts that constitute cruel, inhuman or degrading treatment or punishment in education, labor and health, irrespective of whether they were committed by government officials or civilians, by action or omission."**

Thus, we ask The Honorable Committee Against Torture to encourage and recommend the Costa Rica State to:

1. Elaborate and introduce public policies to guarantee dignity, life, and health care rights—including sexual and reproductive health—as inalienable rights of all GLBTTI people, without discrimination of any kind which could favor actions of torture, abuses and/or cruel treatment.
2. Carry on a national program that embodies sexual education based on scientific knowledge, designed from a comprehensive perspective in regards to gender diversity and sexual orientation, in all educational levels.
3. Promote through the education system and the media a policy of awareness and sensitivity, in order to facilitate minorities' integration—sexual minorities among them—and build respect for equality and non-discrimination in society.

4. Implement public health policies that are inclusive of sexual and reproductive health, and in which public health officials are responsible for eliminating discrimination and maltreatment based on sexual orientation and gender identity.

5. Integrate the policies of the Ministry of Education and the Ministry of Health in order to promote sexual and reproductive rights as part of health and education policies that enable GLBTI children, adolescents, and adults to develop a responsible and healthy sexuality with full autonomy.

6. Promote and develop awareness and training for judges and lawyers who have responsibilities in the labor field, so that discrimination based on sexual orientation and gender identity is acknowledged and fought when it is the cause for dismissal and inhuman treatment.

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<sup>1</sup> CAT/C/24/Add.7

<sup>2</sup> A/56/44, paras. 130-136

<sup>3</sup> CAT/C/CRI/2, June 14, 2006

<sup>4</sup> CAT/C/CRI/2

<sup>5</sup> CAT/C/CRI/2, Items 191, 192, 200, 201 and 202

<sup>6</sup> CAT/C/CRI/2, State Party Report 2002—2006, Item 191

<sup>7</sup> Defensoría de los Habitantes, 2005-2006 Period Report; Special Protection Board, p. 259

<sup>8</sup> Defensoría de los Habitantes, 2006-2007 Period Report; Presentation, p. 16

<sup>9</sup> CAT/C/GC/2/CRP.1/Rev. 4), 39<sup>o</sup> Session, November 23, 2007

<sup>10</sup> CAT/C/GC/2/CRP.1/Rev. 4), V, Item 20

<sup>11</sup> A/56/44, paras.130-136), 26<sup>o</sup> Session, May 17, 2001

<sup>12</sup> "Sexual Minorities and the work of The United Nations Special Rapporteur on Torture", I. Identity, Discrimination, and Torture. A paper submitted by the International Gay and Lesbian Human Rights Commission to Sir Nigel Rodley, Special Rapporteur, June 5, 2001.

<sup>13</sup> "Transversalidades. Los Retos de la sociedad civil en la defensa de los derechos económicos, sociales y culturales", Flavia Piavesan, Interamerican Institute of Human Rights magazine, vol. 40, p. 459 to 461.

<sup>14</sup> "Transversalidades...", Op. Cit., Ref. (13)

<sup>15</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Francisco Madrigal & Daria Suárez Rehaag, Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC/DDHH), August 3, 2003.

<sup>16</sup> Ibid Ref. (14)

<sup>17</sup> Ibid Ref. (14)

<sup>18</sup> CAT/C/GC/2/CRP.1/Rev. 4, V, Item 21.

<sup>19</sup> CAT/C/CRI/2, article 1, Item 3.

<sup>20</sup> Article 123 bis: "Anyone who causes pains, physical or mental sufferings, intimidates or compels a person by act committed or that is suspected to have committed, to obtain from them or from a third one data or confession; for race, nationality, gender, age, political, religious or sexual option, social position, economic situation or civil state reasons, will be sanctioned with three to ten years of prison sentence. If the previous conducts are committed by an official agent, the penalty will be of five to twelve years of prison and incapacitation of two to

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eight years for the exercise of their functions ". Article 123 bis was added through Law no. 8189, of December 18, 2001. It was published in *The Gaceta* on January 15, 2002.

<sup>21</sup> Political Constitution, article 33: "All person is equal before the law and discrimination can not be practiced against human dignity".

<sup>22</sup> Political Constitution, article 40: "Nobody will be put under cruel or degrading treatment neither to perpetual penalties, nor to confiscation penalty. All declaration obtained by means of violence will be null." article 21: "The human life is inviolable". (CAT/C/CRI/2), Item 4.

<sup>23</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref (15)

<sup>24</sup> Ibid. Ref. (23)

<sup>25</sup> Law N° 7771, It was published in *La Gaceta* on May 20, 1998.

<sup>26</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref (15)

<sup>27</sup> Gay Costa Rica: Gay Life and Democratic Process in Costa Rica, Richard Stern, *Gay and Lesbian Review*, July-August 2001. Updated in July 2007.

<sup>28</sup> Diario "El Día", Sucesos, July 15, 2000.

<sup>29</sup> Diario "El Día", Sucesos, December 8, 2000.

<sup>30</sup> Defensoría de los Habitantes, 2001-2002 Period Report; and Immigration and Refugee Board of Canada, CRI41373.E, Sec. R.g.ii, May 15 2003.

<sup>31</sup> Immigration and Refugee Board of Canada, CRI41373.E, Sec. B.j.ii, Case No. 11685-22-2001-QJ, May 15 2003.

<sup>32</sup> CAT/C/CRI/2, Items 58, 60.

<sup>33</sup> Defensoría de los Habitantes, 2004-2005 Period Report, Exps. N° 16791-22-2004; 16804-22-2004; 17351-22-2004.

<sup>34</sup> Diario "La Nación", May 23, 2005, Otto Vargas M.

<sup>35</sup> Informe sobre Costa Rica, Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC) e International Gay and Lesbian Human Rights Commission (IGLHRC), 2003, Chapter IV, Testimony N° 9; and Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref. (15)

<sup>36</sup> Sexual Minorities and the work of The United Nations Special Rapporteur on Torture, Op. Cit., Ref (12)

<sup>37</sup> CCPR/C/CRI/CO/5 Human Rights Committee, 91° Session, November 16, 2007, Items 8 and 9.

<sup>38</sup> Although violations to the right to life imply also the unfulfilling of other articles of the Convention -among them, articles 1, 11, 12, 14 and 16-, we decided to brief these violations under article 2 to stand out that they are based on a discriminatory position towards GLBTTI people.

<sup>39</sup> Political Constitution, article 21, Op. Cit., Ref. (22)

<sup>40</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref (15)

<sup>41</sup> Immigration and Refugee Board of Canada, CRI41373.E, 15 de mayo de 2003; and "La Nación", July 10, 2001.

<sup>42</sup> "La Nación", December 20, 2003. Otto Vargas M.

<sup>43</sup> Immigration and Refugee Board Of Canada, CRI41373.E, 15 de mayo de 2003.

<sup>44</sup> "Extra", September 25, 2006, Adolfo Ruiz.

<sup>45</sup> Adaptación Telética.Com, Osvaldo Alvarado, Telenoticias, January 18, 2008.

<sup>46</sup> CAT/C/GC/2/CRP.1/Rev. 4), V.

<sup>47</sup> CAT/C/CRI/2 Item 86.

<sup>48</sup> CAT/C/CRI/2 Items 86, 87, 88, 91 and 93.

<sup>49</sup> CAT/C/CRI/2, Item 61 to 65.

<sup>50</sup> Defensoría de los Habitantes, 2004-2005 Period Report, Abusos de la autoridad policial.

<sup>51</sup> Defensoría de los Habitantes, 2006-2007 Period Report, p. 378 to 379; and Interview with Raquel (travesti living in San José), January 30, 2008.

<sup>52</sup> Ibid.

<sup>53</sup> Defensoría de los Habitantes, 2006-2007 Period Report, p. 379.

<sup>54</sup> Defensoría de los habitantes, 2005-2006 Period Report, p. 282.

<sup>55</sup> Defensoría de los habitantes, 2006-2007 Period Report, p. 376.

<sup>56</sup> Ibid. Ref. 53

<sup>57</sup> CCPR/C/CRI/CO/5, C, Item 9.

<sup>58</sup> Political Constitution, article 40, Op.Cit., Ref (22). On the other hand, article 37 forbids arbitrary detentions. Penal Code, article 123 bis, Op. Cit., Ref. (20)

<sup>59</sup> "El Día," July 15, 2000.

<sup>60</sup> "El Día," December 8, 2000. Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref. (15)

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- <sup>61</sup> Defensoría de los Habitantes, 2005-2006 Period Report, p. 259 to 260.
- <sup>62</sup> Immigration and Refugee Board of Canada, CRI41208.E, May 15, 2003; and Informe sobre Costa Rica, Op. Cit., Ref (36)
- <sup>63</sup> Ibid Ref. (62)
- <sup>64</sup> Sexual Minorities and the work of The United Nations Special Rapporteur on Torture, Op. Cit., Ref. (12).
- <sup>65</sup> Political Constitution, article 40, Op. Cit., Ref. (22)
- <sup>66</sup> Informe Sobre Costa Rica, Op. Cit., Ref. (35), Chapter 3.
- <sup>67</sup> Informe Sobre Costa Rica, Op. Cit., Ref.(35), Chapters 2 and 4.
- <sup>68</sup> Immigration and Refugee Board of Canada, CRI41208.E, May 15, 2003 Ibid. Ref. (67), Chapter 4.
- <sup>69</sup> Immigration and Refugee Board of Canada, CRI41208.E, May 15, 2003.
- <sup>70</sup> Defensoría de los Habitantes, 2004-2005 / 2005-2006 Period Reports; and Informe Sobre Costa Rica, Ibid. Ref. 67, Chapter 2.
- <sup>71</sup> Political Constitution, article 41: "() everybody have to find repair for the insults or harm received in their person, property or moral interests. They must obtain justice quick, fulfilled, without refusal and in strict conformity with the laws."
- <sup>72</sup> Defensoría de los Habitantes, 2005-2006 Period Report, Exp. 19904-22-2005.
- <sup>73</sup> Informe Sobre Costa Rica, Op. Cit., Ref (35), Chapter 4.
- <sup>74</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref. (15)
- <sup>75</sup> Sistematización y Análisis de Leyes de Salud Sexual y Reproductiva, Derechos Sexuales y Reproductivos en América Latina y el Caribe, UNFPA, Samantha Buglione & Virginia Feix, Brasil, July 2006.
- <sup>76</sup> Informe Sobre Costa Rica, Op. Cit., Ref. (35), Chapter 2
- <sup>77</sup> Defensoría de los Habitantes, 2006-2007 Period Report, Dirección de la Protección Especial, Violaciones de Derechos por la Orientación Sexual de las personas.
- <sup>78</sup> Ibid. Ref. (74).
- <sup>79</sup> Defensoría de los Habitantes, 2006-2007 Period Report, p. 407.
- <sup>80</sup> Defensoría de los Habitantes, 2004-2005 Period Report, Exp. 13256-26-2002-QJ.
- <sup>81</sup> Ibid, Ref (79).
- <sup>82</sup> CRC/GC/2003/4
- <sup>83</sup> Passed on December 14, 1994, and entered into force on March 3, 1995.
- <sup>84</sup> Law No. 7476, article 1
- <sup>85</sup> Law No. 7476, article 2
- <sup>86</sup> Informe Sobre Costa Rica, Op. Cit., Ref (35), Chapter 2.
- <sup>87</sup> Informe Sobre Costa Rica, Op. Cit., Ref (35), Chapter 2.
- <sup>88</sup> Immigration and Refugee Board of Canada, CRI41373.E, May 15, 2003.
- <sup>89</sup> HRI/CORE/CRI/2006, Item 116.
- <sup>90</sup> Diagnóstico Situacional de la Población Gay/Lesbiana de Costa Rica, Op. Cit., Ref. (15)