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supported by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), The Salvadoran Federation of LGBTI organizations (FESLGBTI), Red Salvadoreña de Mujeres Defensoras de Derechos Humanos, Colectiva Feminista para el Desarrollo Local y Agrupación Ciudadana por la Despenalización del aborto terapéutico, ético y eugenésico.



122th Session of the Human Rights Committee

Review of El Salvador

Additional information

on the List of Issues (CCPR/C/SLV/QPR/7)

Human Rights Situation for Lesbian, Bisexual and Trans women in El Salvador

EXECUTIVE SUMMARY

In this alternative report we want to present a review on human rights situation, mainly, for Lesbians and Bisexual women, and some very serious realities when it comes to trans persons.

The List of Issues prior to reporting (LoIPR) produced by the Human Rights Committee for the review of the seventh periodic report of El Salvador (CCPR/C/SLV/QPR/7) raises an issue of prevent and to provide protection from violence and discrimination based on sexual orientation or gender identity including, measures to tackle it and relevant court decisions concerning this matter. Also, we want to stress the request on (a) number of complaint received regarding violence against lesbian, gay, bisexual or transgender persons; (b) the investigations carried out in such instances and their results, including the sentences handed down to the perpetrators; and (c) the remedies provided to the victims.

Following up this LoIPR and in the same spirit we found the recommendation made by CEDAW to El Salvador on it past review on 2017.

Our submission addressed several themes, namely:

1. Discrimination and violence against lesbian and bisexual women (including the lack of effective investigation and statistics, hatred climate, discrimination in health and education and so-called “conversion therapies”);
2. The situation of lesbian women who are the human rights defenders; and
3. Gender identity law.

Apart from describing the problems, we also suggested particular questions to be asked during a constructive dialogue with the State party, as well as recommendations that could improve the situation of Lesbian and Bisexual women and trans persons in the country.

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LIST OF PROPOSED QUESTIONS

We want to present to the Committee some key questions that would help, the Committee itself, but also us as civil society organization to illustrate the realities of lesbians, bisexual and trans women.

QUESTIONS

1. Does the State party have effective legislation that protect lesbian, bisexual and trans persons?
2. What is the current status of a case regarding the attack against ESMULES office in 2015? Has the investigation been conducted, perpetrators identified and convicted, and remedies to the victims provided? Has the State party implemented the precautionary measurements, stated in favor of ESMULES work team, Andrea Ayala and Ernesto Valle by the Ombudsman Offices, if so, what was the result?
3. Does ISDEMU (Instituto Salvadoreño para el Desarrollo de las Mujeres) have any public policy that clearly state the inclusion of lesbians, bisexual and trans women? it refers to violence prevention and attention?
4. What steps has at the State party, specifically ISDEMU, taken to implement recommendations to El Salvador made by CEDAW in March 2017 (CEDAW/C/SLV/CO/8-9), specifically, recommendations to combat violence and discrimination on grounds of sexual orientation and gender identity (para 43)*?
5. Does the State party have national statistics of hate crimes, including lesions, murder, threatens and others, committed against Lesbians and Bisexual women and trans persons? (As stated in the Article 129, 155 of El Salvador Penal Code)

** In this report, we want to use another body of the United Nation and its recommendations as the guide to reflect the realities of lesbians, bisexual and trans women in El Salvador. We are referring to CEDAW, this Committee made two specific recommendations on this issue to our country last year. That's why now we want to present the following:*

RECOMENDATIONS MADE BY CEDAW 66th SESSION (CITA DOCUMENTO ONLINE CEDAW)

- (a) *Put in place mechanisms to ensure the enforcement of legislation against discrimination by law enforcement officials, prosecute hate crimes based on sexual orientation and gender identity, and ensure through monitoring that such cases are duly investigated and adequately punished;*
- (b) *Intensify efforts to combat discrimination against women based on their sexual orientation and gender identity, including efforts to sensitize general public, and ensure continuous capacity building for law enforcement officials and health service providers.*

SUGGESTED RECOMMENDATIONS

1. Create a reform under the violence against women and discrimination law (Ley Especial e Integral para una Vida Libre de Violencia hacia las mujeres, LEIV and Ley de equidad, igualdad equidad y erradicación de las Discriminación contra las mujeres, LIO), that reflects the inclusion of lesbians, bisexual and trans persons.
2. Create a National Policy of LGBTI inclusion as part of the mandate of the Secretariat of Social Inclusion.
3. Create under the National Attorneys offices a specialized unity to investigate hate crimes against lesbians, bisexual and trans women and other LGBTIQ persons
4. Incorporate in the SNIS (Sistema Nacional de Datos Estadísticas e indicadores de género) enforced by ISDEMU, indicators about lesbian, bisexual and trans women and a Consultee Committee of lesbians, bisexual and trans women that work together with ISDEMU to implement, policies and mechanisms
5. Make a public campaign to sensitize general public on LGBTI realities.
6. Access to comprehensive sexual health services, including legal abortion in cases where it is necessary to save the life and protect the health of the woman and approval of the Reform for Article 133 of the Penal Code which seeks to decriminalize abortion for four predetermined reasons.
7. Create a national anti-discrimination law, which stated not only the discrimination based on sexual orientation, gender identity and sex characteristics, but also other kinds of discrimination based on age, ethnic origin, among others.

DESCRIPTION OF SPECIFIC HUMAN RIGHTS PROBLEMS FACED BY LESBIAN AND BI WOMEN AND TRANS PERSONS IN EL SALVADOR

I. DISCRIMINATION AND VIOLENCE AGAINST LESBIAN AND BISEXUAL WOMEN.

In 2017, in its Concluding Observations for El Salvador, CEDAW has expressed its concerns on “the increasing number of harassment cases, threats, intimidation and violence against LGBTI women, including by law enforcement officials,” as well as on “the high vulnerability of LGBTI women to gang violence, and at reports of violence directed at their families, partners, employers and customers.” (CEDAW/C/SLV/CO/8-9, para 42).

Indeed, in El Salvador, there is the lack of investigation of hate crimes and data related to any such cases. Lesbian and bisexual women and trans persons are refused to get a job, expelled from schools. Lesbian women are discriminated against or invisible in the national health system; there is no access to HIV testing and no access to gynecologist, and practice of so-called “conversion therapy” to “cure” lesbian and bisexual women and trans persons is still in place.

Hatred climate and violence: As a clear example, in 2013 a feminist NGO “Las Dignas” drove a public campaign to sensitize general public on lesbian identity, the campaign went under the name of “*I am lesbian because I like it and I want to*” back at that time they paid billboards in main avenues in San Salvador, and they were taken down by the National Council of Publicity in complicity with the Municipality Government¹, this act of suppression on their human right of freedom of expression is one example that can be very significant on how Lesbian Women are treated in El Salvador’s society, the despair with which they are seen, in addition to the risk in which they live because they are inside a society that constantly makes them invisible.

Other issue that lesbian and bisexual women face on a daily basis is the INVISIBILITY in one of the most violent countries on the world to be a woman, on the National Report of Violence against women 2017(CITA INFORME ISDEMU), presented by ISDEMU, it was established that, as of 2015, femicide violence has highlighted the topic of femicide violence. Had an alarming escalation: 574 deaths in 2015 and 524 in 2016. Only in the first semester of 2017, 201 women were counted murdered, being the most violent months, March and June, with 44 and 45 deaths respectively. This means that only in the month of June 2017, **a woman was killed every 16 hours**.

However, in these figures there are no disaggregated data that allow knowing, who of these women were lesbian or bisexual, with the invisibility of their deaths the State made their last act of contempt., the sexism and misogyny has prevented lesbian women to be part of the history they suffer a double discrimination standard for being LESBIAN AND WOMAN².

When it comes to the lesbophobia, lesbian women had expressed that this causes invisibility and feeling of shame, the fact of silencing their sexual orientation, of hiding, of lying, is a form of violence, psychological violence. Violence in public spaces comes from men, as the main

¹ “*Historia de vidas de mujeres Lesbianas*”, Asociación de mujeres por la dignidad y la vida “Las Dignas”, El Salvador. 2017

² *Íbidem*

perpetrator, but in the family, health system and education, they have received violence regardless of whether a man or a woman has been the one that cause it.³

Also, the scourge of Sexual violence is not far from the lives of lesbians, as ORMUSA observatory of violence⁴, indicates that in the first semester of 2017 “The National Civil Police, PNC, registered a total of 1,948 complaints for different sexual crimes, against women, between the period of January to June 2017. The 79% of abuses were committed against children under 17, where girls and adolescents suffer the most abuse, 95.43% and children 4.57%

Nevertheless, none of this numbers refers to lesbian or bisexual women, once again the invisibility among all women, including trans, is the first sign of violence that they received both from society and public institutions. As consequence of this, very hard reality in El Salvador, sexual harassment and abuse, is used as tool to force lesbian and bisexual women to “be cured” or as “conversion therapy”, which in most cases comes as “corrective rape”, as we have collected some personal stories, bisexual and lesbian women faced this abuse in their own families as this is done by fathers, uncles, cousins that abused them, being affected by this at a young age is has important repercussions on their mental health, carries lack of self-confidence and a low self-esteem, also makes it difficult to trust others, but the most worrying thing for the State is the way in which it must face the epidemic of depression and anxiety that lesbian and bisexual women are facing in silence, alone. In some cases, this illness drove to commit suicide or attempt it, in a study conducted by ESMULES⁵, 56% were lesbian or bisexual women.

These consequences are serious given their direct relationship with the risk of life in lesbian women

Abortion. In the Salvadoran context of high rates of impunity and corrective rape based on sexual orientation, lesbian and bisexual woman are impacted in multiple ways by the absolute criminalization of abortion. It is a risky situation as it is for any other woman of reproductive age, but it also creates revictimization because if a lesbian or bisexual woman becomes pregnant because of a corrective rape and presents obstetric complications and seeks an interruption of pregnancy, she risks being criminalized even if the abortion could save her life or diminish the level of impact of the rape.

In addition, for some lesbian and bisexual women defenders who are involved in areas of defense beyond LBGTI rights, publicizing their sexual orientation is used by their own organizations or by adversaries of their work as a way to delegitimize their struggles or expose them to an environment of hostility and discrimination.

Every ten hours a woman is killed; every three hours someone is sexually assaulted. And, in more than 70% of cases, the victims are under the age of 18. In El Salvador, not only is there a lack of

³ *Íbidem*

⁴ <http://observatoriodeviolencia.ormusa.org/violenciasexual.php> . Organización de Mujeres Salvadoreñas por la Paz

(ORMUSA), El Salvador. 2017

⁵ “*Diagnóstico sobre consumo de drogas y prácticas sexuales de riesgo en población LGBT de El Salvador*”, Espacio de Mujeres Lesbianas Salvadoreñas por la Diversidad – ESMULES, CIPAC. El Salvador. 2015

access to contraception, but also safe abortion is absolutely prohibited, which puts at risk the life and health of many women. Furthermore, it criminalizes poor, uneducated, and impoverished women not only for abortion, but for miscarriage as well.

That is why, the design and implementation of a national strategy for preventing, combatting, and punishing femicide and sexual violence based on the proposals that specialized institutions have created on the topic, including protocols to provide attention to survivors of sexual violence is very much needed in a country like El Salvador. Also the effective application of the Normative Framework for Substantive Equality (Comprehensive special law for a life free of violence for women and Law on equality, equity, and eradication of discrimination against women LIVE- LIO) is an urgent issue to be tackle by the State party.

Discrimination in education and health: The violence against lesbian and bisexual women, is also in other scenarios, as the access to education and health, in a study made by ESMULES in 2014⁶ only the 40% of non-LGBTI people in the metropolitan area of San Salvador thinks that lesbians should have an equal access to health and education. In this same study the 68% of the people thinks that lesbians and bisexual women *“have to be treated by a mental health specialist to change their sexual orientation.”*⁷

Specifically, regarding to education access, bisexual and lesbians, in a study conducted by ESMULES ⁸ 28.2% of lesbian women were prevented o expelled from an educational institution because of their sexual orientation. Based on this numbers, is that lesbian girls does not feel safe to demonstrate their sexual orientation and gender expression, nor to be open about it, mostly because there is not a public policy implanted to address this reality from the Ministry of Education, El Salvador does not have a national education policy of inclusion on LGBTI people, Also within the national and private educational system, the bullying based on sexual orientation, against bisexual and lesbian girls and young girls, are most often expressed in segregation by their peers but also attempts of sexual harassment made by their teachers or other school officers. As shown in ESMULES study were the 54.4% of school girls or adolescents had expressed to suffer this type of harassment and bullying.

When it comes to access to the health bisexual and lesbian women faced direct discrimination, for example when it comes to HIV they do not have access to the services, as they do not show as key populations under national HIV programs, which mean they are not taking in count neither in the prevention nor funding to prevent them to get infected, as ESMULES study from 2015, indicate that 24.6% of lesbian and bisexual women *“have being forced to have sexual intercourse without protection”*. Also is important to state that sexual and reproductive health, lesbians an bisexual women doesn't trust in the system as a Study made by the Secretariat of social inclusion in 2011 ⁹ on the focus group made to collect the info the lack of trust, sexual assault and doctors neglecting to treat them were the most repeated issued LB women faced; due to this realities lesbians and bisexual women excludes from the statistics of cervix and breast cancer, which in

⁶ *“Evaluación de actitudes hacia los derechos humanos de las personas LGBT en El Salvador”*, Espacio de Mujeres Lesbianas Salvadoreñas por la Diversidad – ESMULES, CIPAC. El Salvador. 2014

⁷ *Íbidem*

⁸ *“Diagnóstico sobre consume de drogas y practicas sexuales de riesgo en población LGBT de El Salvador”* Espacio de Mujeres Lesbianas Salvadoreñas por la Diversidad – ESMULES, CIPAC. El Salvador.2015

⁹ *“Informes sobre las condiciones de salud integral de la población LGBTI en El Salvador”*, Secretaría de Inclusión Social de la Presidencia de El Salvador, El Salvador. 2011

El Salvador is the second women mortality indicator, among other illness that are mistreated due to their sexual orientation.

“Conversion therapies”: The oppression for lesbian and bisexual women is also reflected in the so called “conversion therapy” which is a way that society has to “cured their ill women”, we state this because is socially accepted that lesbian and bisexual women need to be heal, this scenario has two faces, one is when this “therapy” is done by a mental health professional, could be a psychologist or psychiatrist, that in no way are punish by any law, or any administrative procedure , coming from the Ministry of Health to take their license away, for example, which leave little girls, young and adult women in total danger of being target by this “torture” as we called it. The other face is when is done by so called spiritual guides, in churches from deferent denominations, and they are supported by a wide range of people, but what is most delicate is that in some cases we have officials from the government supporting this hate speech and encouraging this kind of practice.

Mental health consequences: As consequence of the reality that’s faced by lesbian women, they’ve expressed the harsh impact on their mental health “Several of the lesbian women interviewed agree that the impact of lesbophobia and discrimination on their emotional and mental health is relevant. Some claim that they have had or currently have depression, that cause them: frustrations, sadness and emotional instability. Other woman mentions how its authenticity as human being, has been affected, the impossibility of acting with complete freedom of expression in different spaces.

Is important to remark that there is not any official data based on sexual orientation of lesbian and bisexual women.

II. SITUATION OF LESBIANS WOMEN AS HUMAN RIGHTS DEFENDERS

ESMULES is a lesbian-led organization founded in 2009. Since our foundation, we think of ourselves as a civil organization that will bring a real transformation in the life of the Salvadoran LGBTI community, and that is why, we decided to take the path of political advocacy which is not always more expeditiously, but because we firmly believe that through it, we can achieve the changes that our society and our community have so long needed. Also, we work reporting aggressions on LGBTI people, mostly perpetrated by State institutions, e.g., the National Civil Police, one of our more important cases has being the case of A.A.P. a transgender man who was assaulted and placed in detention by police officers in June 2015 (CCPR/C/SLV/6), at that time ESMULES, with others LGBTI organizations, made a public press conference demanding justice for A.A.P. and to prosecute the police officers that committed the assault, that press conference was held in our HQ.

That day, June 30th, we leaved ESMULES HQ as always, by the dawn of next day we learned that our offices were violent trespassed, search without warrant, and that 2 computers, that had all the information about our work were stolen, also 23 case files that stated police abused targeted to lesbians and bisexual women, leaving everything behind even money and checks that we have to pay some bills. The police were called immediately, when they arrived ESMULES’ communication team started to film the whole procedure on how they make it, at that moment the police officers making the investigation threatened us, saying that if we keep filming they will stop

the recognition of the place to formally state a demand from ESMULES. By that time, we received an anonymous call telling us “*be aware the police was the one that broke into your office, I just being told by someone of the government*”, couple a minutes later we received a call from the US Embassy in El Salvador asking for the alleged intrusion on our HQ, at this day we do not know how US Embassy’s officers know about the case.

That very same day we went to the Ombudsman office, at that time it was Lic David Morales, who issued PRECAUTIONARY MEASUREMENT¹⁰ in favor of Andrea Margarita Ayala Melendez, ESMULES’s Executive Director and Luis Ernesto Alonso Valle Linares, ESMULES’s media Director, those measurement asks for the National Civil Police and National Attorney’s office to take action in order to preserve our lives, at this date we have never heard anything from those offices and our precautionary measurement are pending. After 5 days of moving from one hotel to another, because of real persecution, Andrea and Ernesto flee to Washington DC where day spent three weeks while trying to be safe.¹¹

Is important to mention that almost 2 years and half later this case has never been solved nor have any clues on who or why we get attacked.

III. IDENTITY LAW

As CEDAW recommendation (CEDAW/C/SLV/CO/8-9, para 43a) stated, the enforcement of effective legislation that prevent discrimination is an urgent step the El Salvador must take. El Salvador does not have an Identity Law that would allow trans persons to have an identity document that respect their self-determination on their gender identity. This lack of recognition made them, specially trans women vulnerable, in El Salvador in 2017 ended with 34 murders against trans women.

Trans women are affected also by the exclusion of the national and private system of education, as example the Ministry of Education has 8 from 100 points available in the, very new, Index of LGBTI Inclusion from the Secretariat of Social Inclusion¹². Also, the programs of entrepreneurship, economic empowerment and other social programs of the government does not contemplate neither trans women nor lesbian and bisexual.

¹⁰ Reference File number SS-0283-2015, Ombudsman Office of El Salvador (Procuraduría para la Defensa de los Derechos Humanos de El Salvador)

¹¹ Reference File number 1778-UDPP-1S

¹² “**Index of LGBT Institutional Inclusion**” (Índice de Inclusión Institucional LGBT), Secretariat of Social Inclusion, El Salvador. 2017