

Asociación para una Vida Mejor de Personas  
Infectadas/Afectadas por el VIH-SIDA en Honduras  
APUVIMEH, Tegucigalpa, Honduras, C.A.



GLOBAL INITIATIVES  
FOR HUMAN RIGHTS  
A HEARTLAND ALLIANCE PROGRAM

## **Additional information**

**submitted to the Committee on Economic, Social and Cultural Rights  
for the review of Honduras' Second Periodic Report**

**58th Session**

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This Report will particularly provide information in relation to Issue 6 in the List of Issues produced by the Committee for the Honduras' Second Periodic Report (E/C.12/HND/Q/2)<sup>1</sup>.

This Report is submitted by:

- Asociación para una Vida Mejor de Personas Infectadas/Afectadas por el VIH-SIDA en Honduras (APUVIMEH)
- Akahatá - Equipo de trabajo en sexualidades y géneros
- Heartland Alliance for Human Needs & Human Rights

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<sup>1</sup> Committee on Economic, Social and Cultural Rights. List of Issues related to Honduras' second periodic report, approved by the Pre-Sessional Working Group during its 56th session (October 12-16, 2015).

Asociación para una Vida Mejor de Personas Infectadas/Afectadas por el VIH-SIDA en Honduras (APUVIMEH), Akahatá - Equipo de trabajo en sexualidades y géneros and Heartland Alliance for Human Needs & Human Rights are honored to submit the following report to the Committee on Economic, Social and Cultural Rights to assist it in examining the Second Periodic Report produced by Honduras.

## HONDURAS' SOCIAL CONTEXT

### Overview

Honduras is going through a widespread insecurity situation in which human rights violations are systematic and ongoing while the efforts to promote and uphold human rights on the part of the State are scarce.

The Observatory on Violence created by Universidad Nacional Autónoma de Honduras (UNAH) considers Honduras as one of the most violent and unsafe countries in the world, with a rate of 68 violent deaths per 100,000 inhabitants.

The LGTBI community has resisted decades of violations of their human rights and today is facing a difficult and dire situation marked by lack of labor opportunities, poverty, illiteracy, insecurity, social exclusion and marginalization. The responsibility for this falls on the Honduras State and it has been fuelled by those holding political or religious power who have historically violated the rights of LGTBI collectives because of their sexual orientation and gender identity.

To provide just one example in order to illustrate this situation: up to date the Inter-American Commission on Human Rights has issued a total of 9 Precautionary Measures to safeguard the life and physical integrity of LGBT persons - 6 of which were for Honduran LGTBI activists and organizations<sup>2</sup>.

For those with non-mainstream sexualities, the context in Honduras is confusing and hopeless and their opportunities to be involved in the country's public agenda are very restricted.

### LGTBI COMMUNITY'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN HONDURAS

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<sup>2</sup> MC 196/09 (Asociación Jóvenes en Movimiento); MC 403-09 (Reyes and Pavón); MC 457/13 (APUVIMEH); MC 18/10 (Mendoza Aguilar and others); MC 210/08 (Cardoza and other members of CEPRES) and MC 621/03 (Suárez Mejía and other members of Comunidad Gay Sampedrana)

In recent decades, LGBTBI communities have been subjected to different violations of their civil and social rights that continue affecting their lives and their access to health, to decent work, to secular education without biases, to justice and security on equal conditions with the rest of the population.

LGBTBI people should be able to exercise the same rights as all other citizens of Honduras; being a historically marginalized population, they need greater protection from the State to see their rights guaranteed and protected and to be able to enjoy their citizenship fully. The lack of initiative on the part of the State to repair historical discriminations is the key demand we have for it at this moment in time.

#### Issue 6 - Article 2, paragraph 2: non-discrimination

Article 321 of the Honduran Penal Code has been reformed to add 321-A<sup>3</sup> that criminalizes discrimination and incitement to discrimination and hatred on the grounds of sexual orientation and gender identity. However, Article 60 of the Constitution<sup>4</sup> that fails to include sexual orientation and gender identity as grounds on which discrimination is punishable by law remains in force. This shows lack of harmonization of domestic laws and may create an obstacle for trying cases under the Penal Code provisions.

#### Issue 6 - Article 2, paragraph 2: non-discrimination (and Articles 13-14: Right to education)

LGBTBI communities face many obstacles of different kinds to access education in Honduras.

In school facilities across the country, LGBTBI persons are harassed and abused. In many cases, teachers and school authorities condone this violence that leads to dropping-out, illiteracy and precarious conditions of life as LGBTBIs lack the necessary qualifications to enter the labor market and their options are restricted to risky jobs, including sex work. One example is that of young Cristian Ariel Cerrato, a volunteer at APUVIMEH who is openly gay and because of that has had to change schools many times after being discriminated against because of his sexual orientation and the indifference of school authorities who never protected him. Supported by an organization, this highly motivated young man is persisting in pursuing his education but many others give in as they lack the

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<sup>3</sup> Article 321 Penal Code: "This reform includes the crime of discrimination based on sex, gender, age, sexual orientation, gender identity, party affiliation or political opinion, civil status, being Indigenous or Afrodescendant, language, nationality, religion, family status, economic or social condition, disability or being differently-abled, health status, physical appearance or any other attacking human dignity". Article 321-A: "Imposes a prison term of 3 to 5 years and a fine of Lps 50,000 to 300,000 (US\$ 2,200 to 13,300) to the public media inciting to discrimination, hatred, despise or any other form of violence or attack against a person, group or association, foundation, society, corporation, non-governmental organization on any of the grounds listed under Article 321. The same punishment will be applied when the guilty party is an individual acting in his professional capacity or providing a public service".

<sup>4</sup> Honduras Constitution: "All men are born free and equal in rights. There are no privileged classes in Honduras. All Hondurans are equal before the law. All acts of discrimination based on sex, race, class and any other damaging human dignity is punishable by law. The law will establish the specific crimes and punishments for those infringing this normative".

required support to endure abuse - a situation they should never face in school and for which they are entitled to the protection of the State.

The few trans persons who manage to access higher education must pay a very high price. For instance, at UPNFM (Universidad Pedagógica Nacional Francisco Morazán) a trans person was forced to change her personal appearance in order to match that of the gender assigned to her at birth as a condition to be granted her degree in Foreign Languages. Even though she had completed her studies, the University authorities refused to give her the graduation certificate unless she modified her appearance for the ceremony in which those certificates were given out. For a trans person, this is not a simple cosmetic matter but a deep violation of personal identity that causes emotional damage.

Another example is that of young gay man César Adolfo García Vallecillo, a student at Universidad Nacional Autónoma de Honduras (UNAH) who in September and October 2015 was threatened and verbally abused by a teacher both for his sexual orientation and for his political affiliation (to Libertad and Refundación - LIBRE - Party).

APUVIMEH works with sexually non-hegemonic youth - among other marginalized groups - and received an unannounced visit by officials from the Government and Justice Secretary<sup>5</sup> who objected to the material we use to provide information and education to LGTBI youth benefitting from our project. Among other objections, they considered that showing images of same-sex couples expressing their affection to each other was an attack on children's sensibilities.<sup>6</sup>

#### [Issue No. 6 - Article 2, paragraph 2 Non-discrimination \(and Article 12: Right to Health\)](#)

Some progress has been made such as the implementation of VICIT Clinics (Sentinel Vigilance on Sexually Transmitted Infections, VICIT in Spanish) by the Health Secretary to provide specific care for the LGTBI community in Tegucigalpa, San Pedro Sula, and Choluteca. In these clinics, LGTBI users enjoy better conditions and easier access with their confidentiality being respected. But the clinics are considered to be insufficient as the sexually non-hegemonic population is urgently in need of healthcare services - more coverage is needed and there should be specific LGTBI services in all public hospitals.

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<sup>5</sup> Later called Interior and Population State Secretary and currently merged with the Human Rights, Justice, Government and Decentralization Secretary.

<sup>6</sup> A complaint was submitted to the Special Attorney General's Human Rights Unit on August 24, 2011 (Expediente de Denuncia MP – 0801-11-149)

Amendments to the Special Law on HIV-AIDS (Article 47, paragraph 3) establish that individuals living with HIV and AIDS are exempted from any payments in public hospitals; however this disposition is currently not being implemented.

#### Issue No. 6 - Article 2, paragraph 2 - Non-discrimination (and Article 6: right to work)

Access to job opportunities for LGTBI people in Honduras is precarious and limited. LGTBI people tend to create micro-businesses under the informal economy or try to survive in situations of under-employment that do not provide for their basic needs. Often, LGTBI persons are forced to venture into sex work in contexts of violence, drug-abuse and exposure to HIV and other STIs or into irregular emigration.

#### Issue 6: Article 2, paragraph 2 - Non-discrimination (and Article 10: Protection of the family, mothers and children)

In 2004 religious fundamentalists and other powerful groups forced an amendment to Article 112<sup>7</sup> of the Honduran Constitution to forbid same-sex marriage and de-facto unions as well as the recognition of such marriages or unions performed abroad, and to Article 116<sup>8</sup> forbidding adoption by same-sex couples.

These amendments have encouraged homophobic bias in Honduran society and the lack of regulation for same-sex unions creates a situation of inequality affecting the individuals in those unions and their children. Some of the situations in which this inequality becomes evident are those in which a surviving partner is not entitled to inherit or is expelled from the shared home by the deceased partner's relatives; an unemployed partner is not able to benefit from an employed partner's social benefits, including healthcare; the partner who is the biological parent of the couple's children dies and the surviving partner is unable to continue taking care of them, among many others.

#### Positive legislation

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<sup>7</sup> Article 112, amended by Decree 176-2004 and ratified by Decree 36-2005

<sup>8</sup> Article 116 amended by Decree 176-2004 and ratified by Decree 36-2005

In Honduras there are no laws, plans, projects or programs outlining public policies to improve the situation of LGBTBI collectives in terms of the enjoyment of their ESCR. On the contrary, there are dispositions that directly or indirectly affect their rights and that spring from biases about sexual orientation and gender identity, and the lack of interest on the part of the authorities to include our issues in the State's political agenda. In current programs like *"Con Chamba Vivís Mejor, Mi Primer Empleo"* (on youth employment) or *"Yes We Can"* (free English lessons online to improve people's employability) there are no official statistics to allow us to know if LGBTBI individuals have benefitted from those programs or not.

In 2015, APUVIMEH implemented a project called "Care and protection for women, boys, girls and youth at social risk" (Agreement 033-2015 SEDIS/APUVIMEH) sponsored by SEDIS (Development and Social Inclusion Secretary) in the cities of Tegucigalpa, Choluteca, San Lorenzo and El Paraíso. This program provides training on gender-based violence; preventing violence against women, children and youth; sensitization on HIV for public officers; bio-psycho-social care and vocational training on personal care and welding that involved at least 40 LGBTBIs. This is a valuable initiative that needs to be expanded and replicated.

## RECOMMENDATIONS

Taking into account what has been described in the previous sections, we suggest to the Committee the following recommendations to be submitted to Honduras, aimed at guaranteeing a better exercise of the LGBTBI population's economic, social and cultural rights.

- To acknowledge that the LGBTBI population has historically been excluded from access to fundamental rights like those to work, education, health, social security and housing, and on the basis of this guiding principle, to develop a cross-cutting plan involving different government areas to guarantee their inclusion, consulting with the LGBTBI population along the process.
- To harmonize the contents of Article 60 of the Constitution with Articles 321 and 321-A of the Penal Code to guarantee the LGBTBI community (and to others that are named only under the Penal Code disposition) greater protection against discrimination.
- In collaboration with the LGBTBI community, to implement sensitization and training programs on the rights of the LGBTBI community for teachers, students and school authorities to reduce discrimination and abuse in educational settings.

- In collaboration with the LGBTI community, to design and implement a healthcare plan that builds on the successes of the VICIT Clinics to provide non-discriminatory and quality health care for the LGBTI population in public hospitals across the country.
- To monitor LGBTI inclusion in State programmes to increase job opportunities for those at a disadvantage in the labor market and, whenever needed, to design specific interventions to increase their access to work.
- In collaboration with the LGBTI community, to design a programme for accessing labor training and credits, and provide an institutional space for reporting and solving cases of discrimination in the workplace.
- To amend articles 112 and 116 of the Honduran Constitution to allow equality before the law for same-sex couples and families and the full exercise of their economic and social rights to individuals in those couples and families, including children.