



## **Lesbian, Gay, Bisexual, Transgender and Intersex Persons' Status in Costa Rica**

**List of suggested issues submitted to the Working Group on the Costa Rica Report  
Human Rights Committee  
114th Session  
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### **Report submitted by:**

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Mulabi – Espacio Latinoamericano de Sexualidades y Derechos [Latin American Space for Sexualities and Rights]; Heartland Alliance for Human Needs & Human Rights, and Akahatá – Equipo de trabajo en sexualidades y géneros [Working Team on Sexualities and Genders] feel honoured to submit the following issues to the Committee on Human Rights, with the aim of assisting it in preparing the List of Issues to review the implementation of the International Covenant on Civil and Political Rights by the State of Costa Rica.

## Suggested issues

### Discrimination against LGBTI persons and inequalities in the enjoyment of their rights:

Right to equality in the enjoyment of civil and political rights without any kind of discrimination; access to justice; prohibition of arbitrary detention; right to conditions of imprisonment that do not affect personal dignity; equality before the law without any discrimination (Articles 2.1, 3, 9, 10, 14.1 and 26)

1. Article 33 of the Costa Rican Constitution guarantees the right to equality and non-discrimination. But still, a high degree of discrimination against LGBTI persons can still be observed at several levels in Costa Rican society. According to a study conducted in 2012<sup>1</sup>, lesbian women are the most discriminated against in recreational spaces while trans people register the highest rate of discrimination in the workplace.
2. With regard to access to justice, complaints of discrimination based on sexual orientation and gender identity are not followed-up as in most cases the process is extremely complex; in other cases, State inefficiency is responsible for that lack of follow-through<sup>2</sup>. The lack of specific follow-up mechanisms allowing for existing norms to be implemented and the complete lack of institutional support to guarantee the protection of LGBTI persons has also been observed.
3. Article 28 of the Costa Rican Constitution guarantees that nobody can be arrested or persecuted unless she or he has broken a law. However, in Costa Rica the mere fact of being a *travesti*, transgender or transsexual woman<sup>3</sup> walking in the street or engaging in prostitution is enough for her to be persecuted and arbitrarily arrested.
4. Police arrest these women invoking different excuses: that they are causing scandal in a public space or are improperly dressed, that neighbours have complained, or that they have disrespected authorities. They often spend the whole night in detention, without any Court order to that effect, and often are forced to perform sexual acts for policemen in exchange for favours or release<sup>4</sup>.

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<sup>1</sup> Sondeo de Percepción de Los Derechos Humanos de las Poblaciones LGTB en Costa Rica. Centro de Estudios Internacionales (CEI) 2012

<sup>2</sup> Op. Cit.

<sup>3</sup> **Travesti:** a *travesti* is a person who, for different reasons, not only wears those clothes that have been socially codified as belonging to 'the other sex' but also takes on that gender identity. A *travesti* feels no wish to undergo any sex-reassignment surgery (even though there are *travestis* who undergo cosmetic surgeries). **Transsexual:** unlike, *travestis*, transsexuals undergo a series of treatments and surgeries to adjust their bodies to the gender with which they identify. **Transgender:** this is a term taken from the English that refers to those who, without having had sex-reassignment surgeries, live fully in a gender identity and expression chosen for themselves.

<sup>4</sup> News published on July 13, 2010, in *Telenoticias*, Costa Rica TV Channel 7 under the title "Investigation about a video that appears to show a policeman with a *travesti*". This piece of news is only one example of the degrading acts *travestis* are forced into in Costa Rica police stations. It can be watched at <http://www.teletica.com/noticia-detalle.php?id=54996&idp=1>

### **Suggested questions:**

5. What policies – such as sensitization and information campaigns for the general public – has the Costa Rica State adopted to eliminate discrimination against LGBTI persons?
6. Are there any Human Rights and Non-Discrimination training programmes for public service providers and security forces staff to eradicate abuse and discrimination against the LGBTI population?
7. What concrete measures has the Costa Rica State adopted to facilitate access to justice for LGBTI persons whose rights are constantly violated because of their gender identity or expression or because of their sexual orientation?
8. What actions has the State undertaken to stop arbitrary detentions and sexual violence towards trans persons perpetrated by the State police forces?

### **Discriminatory, exclusionary and arbitrary practices in the health system that put the health of the LGBTI population at risk**

Right to non-discrimination; to life; to personal integrity; to not be subjected to cruel, inhuman or degrading treatment or to medical or scientific experiments without their consent; rights of girls, boys and adolescents to comprehensive protection of all their human rights (Articles 3, 6, 7 and 24)

9. The Costa Rica State policies fail to guarantee the specific needs of LGBTI persons. Its health system lacks qualified human resources, technology and infrastructure as well as adequate programmatic and budgetary strategies to guarantee the right to health for the LGBTI population at all levels.
10. With regard to lesbian women's health, stereotypes linked to sexual orientation and gender identity persist and have negative consequences for their health, particularly for their sexual and reproductive health. Due to, among other factors, the lack of information among both health practitioners and lesbian women themselves, discrimination, and information campaigns designed from a heterosexual-only perspective, a high percentage of lesbian women avoid or delay gynaecological check-ups. This constitutes a risk to health - and eventually to life - in cases of breast and cervical cancer, as well as sexually transmitted infections.
11. The HIV/AIDS pandemic is concentrated in the GBT population, and particularly among men having sex with men<sup>5</sup>. But gender identity is not taken into account in epidemiological classifications, rendering both trans people themselves and

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<sup>5</sup> According to the 2010 HSH Prevalence Study, based on the RDSAP methodology, this prevalence is of 10.9%

the information on their high degree of vulnerability to the pandemic invisible<sup>6</sup>. As a consequence, actions and strategies required to confront the pandemic are not adopted. An example of this discriminatory policy is the small budget allocated for this population in comparison with the general population<sup>7</sup>.

12. In relation to trans persons, the public health system shows a strong bias translating into deficient services, mistreatment and a refusal to perform the procedures required for adjusting a person's body to her or his self-perceived gender identity. Costa Rica lacks a Gender Identity Law but the Civil Register has amended the Photography Regulations<sup>8</sup>, allowing trans persons to have identity papers reflecting their gender expression. Health services lack specific care protocols for trans persons that will allow them to access hormone therapy or sex-reassignment surgeries for transsexuals.
13. Medical staff and other health practitioners are not sufficiently trained to care for trans persons and understand their specific health issues. Surgery techniques employed are still rudimentary and there are no incentives for investigating and improving those techniques. Some practices - like prosthesis placing - are not funded by the public health system.
14. Even though the Ministry of Health is producing specific guidelines to guarantee the health of intersex girls, boys and adolescents at all levels, that will also include training for health professionals and practitioners in Costa Rica, intersex persons are in a situation of critical vulnerability, particularly in relation to their health, personal integrity and right to identity<sup>9</sup>.
15. The Intersex population is subjected to surgery or mutilated at the National Children's Hospital before 2 years of age, with an aim to normalize their genitals and under the pretext of avoiding suffering and after-effects in the future. But these persons experience the same or even greater suffering due to the scars, lack of sensitivity in erogenous areas, post-surgery complications and other factors. Most of these surgeries are performed arbitrarily, only to 'improve' appearance without taking into account the functionality of the organs or the subjectivity of the person involved<sup>10</sup>.

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<sup>6</sup> This classification is defined as one of the main problems in terms of information and actions for an effective response to the pandemic. Informe Nacional sobre los avances en la lucha contra el Sida 2010-2011- Ministerio de Salud de Costa Rica.

<sup>7</sup> Medición del Gasto de la Respuesta Nacional al VIH/Sida 2010 – Ministerio de Salud de Costa Rica

<sup>8</sup> Reglamento de Fotografía para la Cédula de Identidad. Decree No 08-2010. Published in The Gazette No 127, July 1, 2010.

<sup>9</sup> Even though one or more of the 75 conditions defining "intersexuality" can be observed in one in every 2,000 births in the world - accounting for about 1.7% of the world's population - society and particularly health practitioners consider this difference as something monstrous and intolerable. See FAUSTO STERLING, Anne *Sexing the Body: Gender Politics and the Construction of Sexuality* (2000), New York: Basic Books; and Granados, Gabriela *Excepciones de la naturaleza, incomprendidas por la sociedad*.

<sup>10</sup> This policy was reflected in a statement by the under-director of the National Children's Hospital, Dr. Orlando Urroz, who told newspaper "Al Día" that "the surgical problem is to be solved by the surgeon" and that "the ideal is that gender is defined during the first week of life". He added that allowing the Intersex person to decide on his or her own gender and sex when reaching adolescence is a misguided theory, a novelty pushed by some extremist groups. See (in Spanish) <http://www.mentesana.net/tag/genitalidad-ambigua/>

16. Health practitioners, and particularly doctors, coerce fathers and mothers of Intersex children claiming that avoiding these treatments and surgeries can have serious consequences for the infant. They are often done without consulting the parents or requesting their authorization, invoking Article 46 of the Children and Adolescents Code<sup>11</sup> that allows professionals to proceed in this fashion. Through this 'normalizing' practice they violate the right of Intersex persons to decide at the right time on their bodies and identities.

### **Suggested questions**

17. What specific measures has the Costa Rica State adopted in terms of budget, infrastructure, updated technology and qualified human resources to make its public health system capable to provide holistic and non-discriminatory care for its entire population, particularly the LGBTI population?
18. Has the Costa Rica State implemented any initiative to train health practitioners and update the curricula of Medicine, Psychology and Nursing Schools to integrate new perspectives about the treatment required by trans and intersex persons from a holistic health perspective?
19. Which policies has the Costa Rica State planned to adopt in order to guarantee holistic health of Intersex people according to international human rights standards and particularly to avoid arbitrary medical practices such as corrective or sexual assignation surgeries during childhood and adolescence?
20. What steps has the Costa Rica State taken to implement a massive sensitization campaign for the general population warning about the damages caused by practicing arbitrary surgeries on Intersex persons?
21. What steps has the Costa Rica State taken to implement an Intersex Persons' Holistic Health Training Programme aimed at health practitioners and warning against the serious bias that invasive methods, such as corrective and arbitrary surgeries performed in childhood imply, without taking into account the fact that any hurried decision about a persons' identity taken so early in her or his life is an attack against their personal integrity?

### **Harassment, abuse and discrimination against LGBTI persons in school settings. Violations of the right to education for girls, boys and adolescents.**

Enjoyment of all civil and political rights in conditions of equality; right to personal integrity; right to not be subjected to abuse, degrading situations or violence; right to freedom of expression; right to privacy; the right of girls, boys and adolescents to the comprehensive protection of all their human rights (Articles 3, 6,7,17, 19.2 and 24)

22. School harassment - a consequence of biases against sexual orientation and

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<sup>11</sup> Law 7739 Costa Rica Children and Adolescents Code <http://cpj.go.cr/docs/derechos/codigo-ninez.pdf>

gender identity or expression - is a serious problem violating the right to education and personal integrity of Costa Rican girls, boys and adolescents<sup>12</sup>. A high percentage of primary school students report having been insulted, threatened, beaten up or mugged at school on those grounds, and the country lacks educational policies to combat this problem. Costa Rica is one of the five Latin American countries with the highest degrees of physical violence in schools<sup>13</sup>.

23. In this context, girls, boys and adolescents face obstacles to access education free from violence and bias restricting their freedom of expression and opinion. Schools of all levels are plagued with multiple discriminations based on heterosexist parameters in relation to gender and sexuality, and this results in abuse, attacks against personal integrity and life-risks at a time that is key for a person's development.
24. In 2013, a Curriculum on Education for Affection and Comprehensive Sexuality [Programa de Estudio de Educación para la Afectividad y la Sexualidad Integral]<sup>14</sup> began to be implemented in Costa Rica. But the Supreme Court's Constitutional Tribunal decided to make sexuality education optional after receiving more than 2000 appeals from Evangelical and Catholic families. The Tribunal also decided that parents could choose to send their children to sexuality education lessons or not, if those lessons could affect their religious beliefs or values.
25. By implementing the Comprehensive Sexuality Curriculum in this discriminatory manner, the State is violating the right of girls, boys and adolescents to access objective, scientific and updated information, consistent with international human rights standards about the practice of sexuality, sexual health and affectivity. The State is failing to fulfil its regional and international obligation to comprehensively guarantee children's human rights<sup>15</sup> that is also mandated by its domestic law<sup>16</sup>.

### **Suggested questions**

26. What political, legal or legislative measures is the Costa Rica State planning to adopt in order to guarantee access to comprehensive sexuality education for the entire population of girls, boys and adolescents, without any kind of discrimination?

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<sup>12</sup> Cfr. Respuestas del Sector Educación ante el *Bullying* Homofóbico , Organización de las Naciones Unidas para la Educación, Ciencia y la Cultura (UNESCO), 2012

<sup>13</sup> Cuadernos de CEPAL 104, Marcela Román y Javier Murillo (2011). Análisis basado en el Segundo Estudio Regional Comparativo y Explicativo (SERCE)

<sup>14</sup> This Curriculum is a step forward in terms of rights as it promotes values like freedom, equality and the celebration of diversity

<sup>15</sup> Costa Rica has ratified the International Convention on the Rights of the Child and the Ibero-American Convention on the Rights of Youth (see its Article 23)

<sup>16</sup> The Children and Adolescents Code establishing the importance of accessing comprehensive sexuality education in Articles 55.c and 58.a, 58.d, 58.e and 58.f

27. What concrete policies has the State of Costa Rica adopted to eliminate school bullying and violence based on sexual orientation and gender identity or expression in order to guarantee the right to education for all LGBTI persons within an environment free from discrimination?

**Violations of trans (transsexuals, *travestis* and transgender) persons' civil rights**

Rights to the enjoyment of all civil and political rights in conditions of equality; not to be submitted to abuse, degrading situations and/or violence; and to equality before the law without any discrimination (Articles 3, 7 and 26)

28. Intersex and Trans (transsexual, *travesti* and transgender) persons are those people among the diversity of Costa Rican people's gender expressions whose rights are violated the most. In Costa Rica it is not possible to change one's name and gender in the identity papers according to one's self-perceived gender.
29. The main legal initiative taken by the State in the area of gender identity and expression is the Photography Regulations for identity papers<sup>17</sup>, that allows the photo to be according to the person's daily image and her or his perceived gender identity, even when it is not consistent with the name and gender registered at the time of her or his birth.
30. Due to this inconsistency, everyday trans persons must face a large number of obstacles, discrimination, exclusion and violence every time they have to go through any public procedure or use a public service that requires proving one's identity by showing personal papers.

**Suggested questions**

31. Has the Costa Rica State submitted any law proposal to amend the current Civil Code and to allow trans persons to change their names and gender according to their self-perceived identity through a free, straightforward and quick procedure?
32. What steps has the Costa Rica State taken to implement a sensitization and information programme on trans, gender diversity and sexual diversity issues for State agents and officers, in particular for Civil Register officers, to fight against discrimination and to eliminate violence against *travestis*, transsexual and transgender persons?

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<sup>17</sup> Decree Nº 08-2010 published in The Gazette 127, July 1, 2010. Article 2: When the photo to be inserted in a personal identity paper is taken, every person has the right to have his/her image and sexual identity respected. This right has to be made compatible with the public interest in having appropriate, safe and reliable identity papers. To achieve this end, facial features must be shown in the photo in such a way that it is possible to identify the carrier of those identity papers.