

Invisible Women:

Human Rights Violations Against Lesbians and Bisexuals in the Caribbean and Latin America

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Methodology

Lesbian and bisexual (LB) women face a unique challenge of being female and non-conforming to the heterosexual normative society accepts. The hardship of being a woman has been studied in length regarding topics like education, property rights, and employment. Within that hardship is an intensification of discrimination based on sexual orientation towards lesbians. This means that though there are reports of discrimination towards women, which naturally would include the LB community, there is a lack of information on the hardships lesbians uniquely experience.

In this report, a survey created by Akahata was distributed to Latin American and Caribbean (LAC) countries. The survey focused on eleven human rights violations that LB women face but have scarce reporting. These violation topics include the impact of criminal laws within the country, discriminatory laws and police practices, inequities in access to health, inequities to access to credit, inequities in recognition of the relationship of LB couples, lack of family protections for co-parenting, discriminatory practices in education, discriminatory housing practices, employment discrimination, discrimination in gender identity with non-conformity, and overwhelming violence. The survey was produced in English and Spanish. This report attempts to synthesize the survey data received to gain a greater understanding of the human rights violations faced by lesbians in LAC countries.

The international standards for protection against discrimination of sexual orientation are explained in this report. Findings are also presented in this report, which were aggregated from the survey and secondary sources, such as UN reports, shadow reports by non-governmental organizations, media reports, and each countries legal Constitution. Recommendations for a state's legal adherence to these international standards are emphasized.

Background: Understanding the Invisibility

There is a lack of information regarding human rights violations experienced by LB women. It would be wrong to assume that the lack of information represents a lack of incidents to report. The issue of reporting is one of gaining priority.

The discrimination against gay men has been largely the focus of many LGBT human rights reports due to the criminalized language of “sodomy” or “buggery” in a numerous amount of LAC countries constitutions. This means that lesbians and the relationship of sexual intimacy between women is often not officially criminalized. There are a few states that expand their criminalization of same-sex intimacy with descriptions of “unnatural” or “indecent acts” and this wording encompasses woman to woman intimacy. However, even with these extended laws prohibiting all same-sex activity, the impact on lesbians by these laws is not greatly researched in comparison to other LGBT members. Transgender also receives heightened attention due to the visibility of the individuals within their States. Regrettably, transgender individuals are frequently targets of violence because of how readily identifiable some may be. The research given to gay men and transgender is of great importance and this report does not intend to compete with that need. This reports intention is to bring visibility to the lack of research on lesbians regarding discrimination and hardships endured specific to their life.

There has been a great effort to improve the human rights of women in LAC countries.¹ Reports discussing all aspects of the lives of women have been completed with recommendations on how to make their lives an equal experience to the lives of men. Lesbians may benefit from these improvements so long as their sexual orientation is not revealed. When a woman is discovered to be a lesbian or bisexual, the rights fought for equality between the sexes fails to extend to equality between sexual orientation. The hardships faced by being a woman are numerous. This may be another reason for the lack of focused research for human rights violations endured by lesbians. The process for change is often to begin broad, impact the majority, and then narrow to groups whose human rights remain underrepresented. From these groups, the most visible are attended

¹ <https://www.unwomen.org/en/where-we-are/americas-and-the-caribbean>.

to first as we have seen with gay men and transgender. It is now time to bring to light the need for greater understanding of the lives of lesbians in LAC countries.

There will be numerous gaps within the report due to the lack of information available, which only highlights further the need for this type of research. The trickle of evidence that lesbians are enduring large amounts of violence, threats, and discrimination against basic activities such as access to health, education, and employment is present, but not in great volume. This report contends that if a focused research on the lives and liberties of lesbians in Latin America and the Caribbean is thoroughly conducted than an overwhelming amount of visibility could be brought to these women.

Specifically, the role of motherhood is a unique struggle not readily researched regarding lesbians. Whether it is the lack of access to in vitro fertilization (IVF) or the inability for the non-birth mother to formally adopt a child shared by a lesbian couple, the inequality face by lesbian couples should be reported and fought against. Not only is there a challenge in discrimination against being a woman in areas like employment and education, but there is a larger isolation created for lesbians in these daily life activities. This report aims to bring to light these specific challenges and the many other challenges that are likely to be discovered.

International Law: Non-discrimination of Sexual Orientation and Gender Identity

International human rights law virtually universally protects against discrimination regarding sexual orientation and gender identity. Six of the eight principal human rights treaty bodies have consistently applied international human rights standards to address the various violations that occur when such discrimination is prevalent in a country.² Since these treaty bodies discuss sexual orientation, lesbian and bisexual women are protected and all committee recommendations apply to them. Further, any law or protection that applies to women also applies to lesbian and bisexual women.

In 2011, the Human Rights Council (HRC) adopted Resolution 17/19, *Human rights, sexual orientation, and gender identity*, which expresses concern regarding violence and discrimination against individuals due to their sexual orientation and gender identity.³ The council called for a study on the issue, which found in 2015 that states have an obligation to (among others): (1) Repeal laws criminalizing homosexuality, (2) Enact effective anti-discrimination laws and work to end negative stereotypes, including through public education campaigns, (3) Investigate crimes and enact hate crime laws, (4) provide legal recognition to same-sex couples and protect the rights of their children, and (5) consult LGBT people when making laws that impact their rights.⁴ This report has found that many states have not been compliant with such obligations.

In addition to being beholden to the international treaty bodies, Latin America and Caribbean countries cannot escape the Inter-American standards. The Inter-American Commission on Human Rights (IACHR) has repeatedly established that non-discrimination is foundational to an effective human rights protection system.⁵ Further, the Inter-American

² These bodies include the Human Rights Committee; the Committee on Economic, Social, and Cultural Rights; the Committee on Elimination of Discrimination Against Women; the Committee on Elimination of Racial Discrimination; the Committee on Children's Rights; and the Committee Against Torture.

³ G.A. Res. 17/19, UN Doc. A/HRC/17/L.9/Rev.1, (June 25, 2011), *available at* http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19.

⁴ *Id.*

⁵ See IACHR Annual Report, Chapter VI, *Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-discrimination*.

system pursues the equality, autonomy, identity and dignity of all citizens; The IACHR even stated that “at the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *ius cogens*. The whole legal structure of national and international public order rests on this premise and it permeates every legal system.”⁶

The American Declaration of the Rights and Duties of Man stated that “all are born free and equal, in dignity and rights” and that “all people are equal before the law. . . without distinction as to. . . sex.”⁷ The American Convention on Human Rights provides that States must respect and guarantee human rights “without any discrimination for reasons of . . . sex”⁸ and that “they are entitled, without discrimination, to equal protection of the law.”⁹

Case law has solidified the protection against discrimination of sexual orientation. *Atala Riffo and daughters v. Chile* held that gender identity and sexual orientation is protected under Article 1.1 of the Convention.¹⁰ *Flor Freire v. Ecuador* and *Duque v. Colombia* reaffirmed the prohibition of discrimination under Article 1.1.¹¹ The Inter-American Court went further to explain that any expression of gender is also protected.¹²

Research has shown that discrimination is prevalent in the majority of Latin America and the Caribbean, despite International and Inter-American standards. This discrimination has permeated every aspect of the individual’s life: from housing and employment to family matters such as adoption and IVF. States must make sweeping changes to comply with the standards that they are obligated to follow.

⁶ See I/A Court H.R. Gender identity, and equality and non-discrimination of same-sex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 61.

⁷ American Declaration of the Rights and Duties of Man, April 30, 1948, Article II (Right to equality before the law).

⁸ American Convention on Human Rights, November 22, 1969, Article 1.1.

⁹ American Convention on Human Rights, November 22, 1969, Article 24.

¹⁰ Report 103/09. Case 12.508. *Karen Atala and daughters v. Chile*, December 18, 2009, para. 100

¹¹ *Duque v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 26, 2016. Series C No. 310; I/A Court H.R. *Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs.

¹² I/A Court H.R., Gender identity, and equality and non-discrimination of same-sex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 79.

Human Rights Violations Topic Summaries

Within the Law

Criminalization: Latin America is progressively supportive of lesbian and bisexual rights as several states have repealed old laws criminalizing same-sex intimacy.¹³ Guyana remains the only state in Latin America to criminalize same-sex intimacy through the state's buggery laws.¹⁴ There are several titles given to the prohibition of same-sex intimacy such as buggery or sodomy, which are aimed at male to male relations.¹⁵ Though female to female relations are not explicitly illegal in many countries, its acceptance is still rare. These laws are often centuries old dating back to the 1800's when women were not considered as much more than a man's possession.¹⁶ This absence of criminalizing lesbian sexual activity is not evidence of acceptance, but more likely overlooking women's rights to control their own bodies. Further, in the Caribbean the acceptance of same-sex intimacy is even weaker and the laws much stronger than those in Latin America. Jamaica, Saint Kitts & Nevis, and Antigua & Barbuda each have laws criminalizing male to male relations.¹⁷ In Saint Lucia, Saint Vincent, Barbados, Dominica, and Grenada the laws encompass all same-sex relations to be illegal under gross indecency or unnatural offenses statutes that can range anywhere from ten years to life in prison.¹⁸

¹³ Omar Encarnacion, *Latin America's Rights Riddle*, FP Argument, Aug. 27, 2018, <https://foreignpolicy.com/2018/08/27/latin-americas-rights-riddle/>.

¹⁴ Laws of Guyana, Criminal Law Act Section 352-355, http://www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf.

¹⁵ See <https://prostitution.procon.org/sourcefiles/AntiguaandBarbudaSexualOffencesActof1995.pdf> Sexual Offences Act of 1995 (Act No. 9) Buggery Article 12.

¹⁶ See Peru Penal Code 1863 as example.

¹⁷ JFLAG, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report* (Oct. 2016). https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT_CCPR_CSS_JAM_25269_E.pdf; U.S. Department of State, *2018 Country Reports on Human Rights Practices: Saint Kitts and Nevis* (March 13, 2018) <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/saint-kitts-and-nevis/>; Antigua & Barbuda, Sexual Offences Act of 1995 (Act No. 9) Buggery Article 12.

¹⁸ U.S. Department of State, *SAINT LUCIA 2018 HUMAN RIGHTS REPORT*, <https://www.state.gov/wp-content/uploads/2019/03/SAINT-LUCIA-2018.pdf>; U.S. Department of State, *SAINT LUCIA 2018 HUMAN RIGHTS REPORT*, <https://www.state.gov/wp-content/uploads/2019/03/SAINT-LUCIA-2018.pdf>; Dominica, Sexual Offences Act 1998, <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>

Anti-discrimination Laws: The Caribbean lacks protections for the LB community in many states because it is illegal to participate in same-sex relations. Therefore, the creation of anti-discrimination laws has not occurred in the Caribbean outside of Cuba and the Dominican Republic.¹⁹ In Latin America, many countries have laws that explicitly list protections against discrimination for sexual orientation.²⁰ Other countries such as Ecuador²¹ and Barbados²² fail to protect citizens from persecution due to sexual orientation.

Gender Identity: Lesbians, bisexuals, and transgender lesbians frequently endure gender identity discrimination. Societal expectations on the roles of women and men are deeply ingrained in LAC countries. This creates a vulnerability for individuals that do not meet the societal norm for how a woman should dress or act. There are few LAC countries that have legal protections against discrimination regarding gender identity issues.²³ This can lead to verbal and physical attacks against a person whose gender is non-conforming with little ability for the lesbian victim to find protections under the law.²⁴

Violence

Violence: Murders in Latin America and the Caribbean are occurring at an alarming rate among the LGBT community.²⁵ Numerous stories of lesbians being physically and verbally attacked, raped, kidnapped, and falsely imprisoned have been shared across LAC countries.²⁶ In some states, family members reportedly pay upwards of \$1,500 a month to involuntarily commit their lesbian or bisexual relatives in the hopes of “curing” their sexual

¹⁹ U.S. Department of State, *2018 Country Reports on Human Rights Practices: Cuba*, Mar. 13, 2018, at Section 6, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/cuba/>.; <https://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

²⁰ See the Uruguayan Constitution, Article 1 of the Political Constitution of the United Mexican States, the Non-discrimination Law 20.609 of 2012 in Chile, the Constitution of Belize, as examples.

²¹ Committee on the Elimination of Discrimination Against Women, *Report of Guyana*, at the Replies by the Delegation section (July 12, 2019), <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24826&LangID=E>.

²² <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/barbados/>.

²³ See <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

²⁴ *Id.*

²⁵ Anastasia Moloney, *At least 1,300 LGBT+ people were murdered in Latin America and the Caribbean in the last five years*, Thomas Reuters Foundation, Aug. 08, 2019, <http://news.trust.org/item/20190808180147-1o1l2>.

²⁶ J-FLAG, *Jamaica LGBT Shadow Report*, at the bottom of page 4 (Dec. 2015).

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT_CCPR_ICO_JAM_22756_E.pdf.

orientation.²⁷ These methods are belittling and degrading with detrimental impacts both emotionally and physically to the captive. There is a distrust among lesbians and police in which justice is rarely pursued on their behalf. When an attack on an LB woman is reported the victims stories reveal that they felt the police did nothing to help and would laugh out loud about their attack.²⁸ Many other victims do not bother to report violence they have endured because they do not believe anything will be done to help.²⁹

Familial Challenges

Recognition of Couples: The Caribbean as a whole fails to recognize same-sex marriage or couples.³⁰ In Latin America, few states recognize same-sex marriage (Argentina, Columbia, Mexico, and Brazil) or civil unions (Chile and Ecuador).³¹

Access to IVF and Adoption: A lack of legal protection for co-parenting between lesbian couples is a weakness among many LAC countries.³² Legalities for custody and/or visitation rights of the non-biological mother are of great concern when a relationship ends, and children are involved. The opportunity for lesbian couples to adopt remains a restricted right as many countries only allow an adoption to be completed by heterosexual couples or single individuals.³³

²⁷ "Gay people, mostly lesbians, are typically admitted to clinics by their parents or other relatives and held against their will for at least three months, with therapy costing up to \$1,500 a month." Anastasia Moloney, *Gay Men In Ecuador Are Being Beaten And Raped To Cure Them, Activist Say*, Thomas Reuters Foundation, Feb. 08, 2018.

https://www.huffpost.com/entry/ecuador-sexual-violence-gay-men_n_5a7cd167e4b08dfc93022c1d

²⁸ Human Rights Watch, *I had to leave to be me*, Mar. 2018, at page 49-50.

https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

²⁹ *Id.*

³⁰ World Population Review, *Countries where Gay Marriage is Legal 2019*, September 08, 2019,

<http://worldpopulationreview.com/countries/countries-where-gay-marriage-is-legal/>.

³¹ *Id.*

³² Criminalization of same-sex relations in the Caribbean make all other aspects of life for lesbians inaccessible. Many Latin American countries have progressive rights as same sex parents. Even Guyana participates in adoption. See

<https://www.kaieteurnews.com/2015/12/16/homosexuals-can-adopt-be-foster-parents-guardians-cpa-director/>.

³³ See Article 22 of the Family Code of Honduras as example.

Economic, Social and Political Rights

Housing: Property ownership has been a struggle for lesbians in many of the Latin American and Caribbean countries.³⁴ Because so few of the countries recognize legal rights to lesbian couples, when there is a death or relationship separation the rights in the property that was once shared by the couple can quickly become unfairly assigned to another. Regarding discrimination of rentals and landlord tenant issues, there has been documentation of discrimination and violence³⁵ against renting to same-sex couples with in Latin America and Caribbean countries, though some progress has been made to include sexual orientation in the sphere of protections for anti-discrimination laws for housing in a few of these countries.³⁶

Employment: Improvements have been made in regards to protections and anti-discrimination laws regarding employment to avoid gender discrimination and in many countries there is protection also for sexual orientation.³⁷ However, the enforcement of these protections appears to be problematic as there continues to be numerous testimony of discrimination within their workplace of harassment or even being assigned less favorable jobs due to sexual orientation.³⁸

Health: The struggle for adequate and equitable female care unique to LB women is prevalent.³⁹ Discrimination when sharing sexual orientation at a doctor's appointment has

³⁴ See Dominica.

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominica/>; Grenada <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>; Guyana.

<https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/>.

³⁵ See, Haiti Case study 2013.

<https://www.madre.org/sites/default/files/PDFs/Haiti%20ICCPR%20Report%20ENG%202014%20final.pdf>.

³⁶ Cuba is the only Caribbean country to note protections for sexual orientation in its Constitution.

See also <https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/> which describes protections in Uruguay, Mexico, Chile, Belize, Bolivia, Peru, Suriname, Columbia, Costa Rica, Ecuador, El Salvador, and Honduras.

³⁷ Countries with sexual orientation employment protections include: Uruguay, Mexico, Chile, Bolivia, Peru, Venezuela, Suriname, Colombia, Ecuador, Nicaragua, and Panama.

³⁸ See Argentina, available at

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_368962.pdf.

³⁹ See Cuba, available at

<http://www.ipsnews.net/2015/04/lesbians-receiving-unequal-treatment-from-cuban-health-services/>; Guyana

been reported, which makes trusting physicians a challenge.⁴⁰ Education among practitioners is limited in dealing with conversations regarding sexual orientation and the health concerns surrounding.

Education: LB youth in LAC countries have reported bullying and shaming not only by peers but also by their teachers and the administrative school staff due to their sexual orientation being revealed.⁴¹ These interactions have resulted in grave mental and emotional reactions and at times, endangered the physical safety for LB youth.⁴²

Access to Credit: There is limited data on financial access in LAC countries. Efforts to empower more women in accessing credit to open their own small business or to buy property is improving within LAC countries.⁴³ However, specific data on the treatment of LB women attempting to access credit is not available at this time.

https://www.researchgate.net/publication/306526099_An_Exploration_of_the_Health_Care_Experiences_Encountered_by_Lesbian_and_Sexual_Minority_Women_in_Guyana.

⁴⁰ Paraguay survey response.

⁴¹ See <https://advocatesforyouth.org/resources/fact-sheets/lesbian-gay-bisexual-and-transgender-lgbt-youth-in-the-global-south/>.

⁴² See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25105&LangID=E>.

⁴³ See Ecuador, <https://borgenproject.org/credit-access-in-ecuador/>.

List of Countries

The following countries were sent the survey containing the eleven topics with questions regarding the human rights of lesbians within each country.

Latin America

Argentina

Belize

Bolivia

Brazil

Chile

Columbia

Costa Rica

Ecuador

El Salvador

Guatemala

Guyana

Honduras

Mexico

Nicaragua

Panama

Peru

Suriname

Venezuela

Caribbean

Antigua & Barbuda

Barbados

Bahamas

Cuba

Dominica

Dominican Republic

Grenada

Haiti

Jamaica

Saint Kitts & Nevis

Saint Lucia

Saint Vincent

Trinidad & Tobago

Discrimination within the Law

I. Criminalization Laws

A. International Standards

There are a number of international committees and governing bodies who outline the quality of protection each citizen should be receiving within their country. The International Covenant on Civil and Political Rights (ICCPR)⁴⁴, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁵, and the American Convention on Human Rights (ACHR)⁴⁶ are compelling treaties that outline the requirements of a State's obligation to its citizens, including the decriminalization of same-sex intimacy as these laws hinder the quality of life and freedom of expression for lesbian citizens. Antigua and Barbuda, St. Kitts and Nevis, and St. Lucia have not ratified these treaties.⁴⁷

B. Findings

Countries whose laws make a person a criminal simply for existing creates an environment of hostility and oppression for its lesbian citizens. There are numerous countries that have up to life imprisonment for same-sex intimacy.⁴⁸ However, it is impossible without confession or observation to know that a person has broken the law against same-sex intimacy. This means that most arrest are happening because a person has been accused or perceived to be a lesbian.

In the Caribbean only the Bahamas, Dominican Republic, and Cuba permit consensual same-sex intimacy.⁴⁹ The laws of these countries do not criminalize lesbians but there are few protections. The remaining countries in the Caribbean do criminalize same-sex intimacy and the following countries laws directly impact the LB community.

⁴⁴ OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴⁵ <http://www.refworld.org/docid/4a60961f2.html>.

⁴⁶ <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

⁴⁷ *Human Rights Watch*,

https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

⁴⁸ See Barbados, Saint Lucia, Saint Vincent, Dominica, and Grenada.

⁴⁹ https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf.

In Antigua & Barbuda, when viewing the governmental database there is no mention of female to female sexual relations. However, Article 15 (1) states, “A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment.” Section (3) describes, “An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of genital organ for the purpose of arousing or gratifying sexual desire.”⁵⁰ This could encompass the relations between female partners. Both Article 12 and Article 15 can impact the rights of bisexuals. These laws have been noted to be infrequently enforced, however they are still valid.⁵¹

In Dominica, the Sexual Offences Act of 1998, Section 14⁵² describes gross indecency as forms of genital arousal for sexual pleasure as the specified offense. This descriptive law makes it illegal to be a lesbian or bisexual, punishable by 5 years imprisonment, although it was reported that enforcement of this law was rare.⁵³

In Grenada, the Criminal Code Book III, Part IX, Title XXIX Public Nuisances section 430 states that, “Whoever publicly and willingly commits any grossly indecent act is guilty of a misdemeanor.”⁵⁴ The lack of specification of what a “grossly indecent act” would be leaves LB women vulnerable of breaking the law if it were to be interpreted to include public displays of affection by same-sex couples such as kissing or holding hands. Also, section 431 under the same Title states, “If any two persons are guilty of unnatural connexion...every such person shall be liable to imprisonment for ten years.”⁵⁵ This law also places lesbians at risk because connexion most basically describes having a relationship.

In Saint Lucia, the Criminal Code, No. 9 of 2004 - Section 132 (Gross Indecency) condemns consensual same-sex intimacy and carries a maximum penalty of five years imprisonment.⁵⁶

⁵⁰ *Sexual Offences Act of 1995*, Article 15.

⁵¹ <https://www.state.gov/wp-content/uploads/2019/03/ANTIGUA-AND-BARBUDA-2018.pdf>.

⁵² <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>.

⁵³ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominica/>.

⁵⁴ http://www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF.

⁵⁵ *Id.*

⁵⁶ https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

In Saint Vincent, a similar code to Saint Lucia is provided condemning consensual same-sex intimacy under gross indecency laws with a maximum penalty of five-year imprisonment.⁵⁷

In Barbados, the Sexual Offences Act 1992, Chapter 154, § 12, reads '(1) A person who commits an act of serious indecency on or serious towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years [...] (3) An act of "serious indecency" is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.'

In Guyana, Section 355 in the Criminal Law (offenses) describes "indecent acts" are punishable by two years imprisoned, which creates a risk for lesbian public display of affection to possibly fall within this description.⁵⁸ In 2018, the highest court struck down the law that made "cross-dressing" illegal, which was a victory for the transgender community as well as non-gender conforming lesbians.⁵⁹

The remaining countries that do not criminalize same-sex intimacy are all in Latin America.

⁶⁰ These criminalizing laws invite a violent societal discord within the countries and place a target on the back of every citizen who is lesbian. To remove these laws would be to lessen the stigma and dangers experienced by LB citizens in these criminalizing countries. The right to freedom of self-expression of one's own body should not be limited by the government. It is imperative that the leaders within each country revise their laws and promote equality and safety for all of its citizens.

⁵⁷ *United States State Report*,

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/saint-vincent-and-the-grenadines/>.

⁵⁸ http://www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf.

⁵⁹ <https://www.reuters.com/article/us-guyana-lgbt-crossdressing/guyana-strikes-down-law-against-improper-cross-dressing-idUSKCN1NJ2R6>.

⁶⁰ Non-Criminalizing States: Belize, Mexico, Chile, Bolivia, Brazil, Peru, Venezuela, Guatemala, Suriname, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Paraguay, and Argentina.

II. Anti-Discrimination Laws

A. International Standards

The Caribbean and Latin America lack adequate legal protections for sexual minorities. Even the countries that may not criminalize same-sex intimacy are deficient in their creation of anti-discrimination laws to protect lesbian citizens. In July 2019, the United Nations Human Rights Council (UNHRC) affirmed the mandate of the Independent Expert that focused on the protection against violence and discrimination on the basis of sexual orientation and gender identity.⁶¹ This places a burden among the many states that lack protections for sexual minorities to quickly and accurately develop anti-discrimination laws.

The Inter-American Court found in *Flor Freire v. Ecuador*⁶² and *Duque v. Colombia*⁶³ that sexual orientation is a prohibited criterion of discrimination under Article 1.1 of the Convention.⁶⁴ States that are not adhering to these international standards due to the lack of protective laws within the State must remedy this failure swiftly. In 2015, the CEDAW Committee noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.⁶⁵

The International Covenant on Economic, Social and Cultural Rights declares that members “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The Committee, in its General Comment 20, has expressed the nature of States’ obligations under Article 2(2), stating that, “Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States parties to guarantee

⁶¹ <https://arc-international.net/un-renews-crucial-mandate-for-protection-against-violence-and-discrimination-based-on-sexual-orientation-and-gender-identity/>.

⁶² http://www.corteidh.or.cr/docs/casos/articulos/seriec_315_esp.pdf.

⁶³ http://www.corteidh.or.cr/docs/casos/articulos/seriec_310_esp.pdf.

⁶⁴ <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>, Article 1.1 “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

⁶⁵ https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights.”⁶⁶

B. Findings

While the majority of the Caribbean does not provide laws against discrimination of sexual orientation or gender identity, both Cuba⁶⁷ and the Dominican Republic⁶⁸ offer protections. There are some positive laws being implemented in the Cuban Constitution, amended in 2019, under Article 42 which prohibits all discrimination on the basis of gender, gender identity and sexual orientation, among others.⁶⁹ In the Dominican Republic, the State’s Criminal Code was updated in 2015 to create protections against discrimination for “sexual preference or orientation.”⁷⁰ All other Caribbean States lack anti-discrimination laws on the basis of sexual orientation or gender identity.⁷¹

In Latin America, there are several states that offer protections against discrimination for sexual orientation or gender identity. These States include Uruguay, Mexico, Bolivia, Peru, Suriname, Brazil, Chile,⁷² Belize,⁷³ Honduras,⁷⁴ Nicaragua and Costa Rica.⁷⁵

In Argentina, the survey response stated that a national law on discriminatory acts of 1988 exist but is very limited and does not mention sexual orientation or gender identity or expression.⁷⁶ The survey explained, “there are numerous lower-level regulations that explicitly include these characteristics as prohibited grounds of discrimination. The most prominent example is perhaps the Constitution of the

⁶⁶ Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para. 7.

⁶⁷ <http://theconversation.com/cuba-expands-rights-but-rejects-radical-change-in-updated-constitution-112578>.

⁶⁸ <https://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

⁶⁹ <http://theconversation.com/cuba-expands-rights-but-rejects-radical-change-in-updated-constitution-112578>.

⁷⁰ <https://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

⁷¹ Antigua & Barbuda, Barbados, Bahamas, Dominica, Grenada, Haiti, Jamaica, Saint Kitts & Nevis, Saint Lucia, Saint Vincent, Trinidad & Tobago are all Caribbean States that lack protections against discrimination for sexual orientation.

⁷² https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf.

⁷³ https://ilga.org/downloads/31ST_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf.

⁷⁴ <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>

⁷⁵ <https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/>

⁷⁶ See Appendix for Argentina survey response

Autonomous City of Buenos Aires, sanctioned in 1996, which was the first legal text of the country to mention as protected categories sexual orientation and gender identity. Then there are municipal ordinances, internal regulations of universities, health centers, etc. and other national laws on access to rights and services where it is prohibited to restrict or discriminate based on sexual orientation or gender identity.”⁷⁷ Further, there are safe spaces for LB women to socialize, numerous famous people are openly lesbian and/or in support of LBGT issues, and the census accounted for same-sex relationships.⁷⁸

In Venezuela in 2016, progress for LGBTI rights was seen when the first transgender was elected to public office in Venezuela and also Latin America.⁷⁹ However, the Annual Report of 2018 showed Venezuela is still of concern to the Inter-American Commission on Human Rights claiming that the lack of data on LGBTI citizens within its region is concerning and reminds Venezuela of its obligation to ensure protections to its LGBTI citizens.⁸⁰

In Guatemala, there are no protections that prohibit discrimination specifically on the basis of sexual orientation or gender identity, which this gap in protection for LGBTI violates the State’s obligations to the International Covenant on Civil and Political Rights under Articles 2(1) and 26 of the Covenant.⁸¹

In Colombia, there is a lack of protections against discrimination for LGBTI citizens. The UN Human Rights Council within the Universal Periodic Review (UPR) disclosed grave concerns of discrimination occurring within the region including the practice of “corrective rape”, which violates the rights of Colombian sexual minorities.⁸²

In Guyana, same-sex intimacy is criminalized so naturally there are no anti-discrimination laws to protect sexual orientation or gender identity. Delegates from Guyana have recognized the inadequacies of protections for each of their citizens and are hopeful improvements will be made.⁸³

⁷⁷ See Appendix for Argentina Survey Response.

⁷⁸ *Id.*

⁷⁹ <https://foreignpolicy.com/2016/01/06/venezuela-just-swore-in-its-first-transgender-legislator/>.

⁸⁰ <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4B.VE-en.pdf>.

⁸¹ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁸² <https://arc-international.net/global-advocacy/universal-periodic-review/>.

⁸³ <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24826&LangID=E>.

In Paraguay, there is an absence of anti-discrimination laws to protect specifically sexual orientation or gender identity.⁸⁴ There is limited reporting because victims of this type of discrimination have no legal recourse.⁸⁵ In the survey response for Paraguay reported, “No, there is no law against discrimination, therefore there is no complaint mechanism nor is there an agency that deals directly. There is a census, but there is no record of lesbians.”⁸⁶

In Jamaica, a survey was completed in 2016 by J-FLAG that revealed 83.7% of the survey participants felt being lesbian was immoral.⁸⁷ The anti-discrimination laws in place do not extend to protections for the LGBTI community.⁸⁸

Additionally, Ecuador⁸⁹, El Salvador, Panama, and Nicaragua⁹⁰ do not have anti-discrimination laws that extend protections to sexual orientation or gender identity. Some of the states vary by region or town on the support for protections available for sexual orientation or gender identity. The need for comprehensive inclusion of protections throughout the Caribbean and Latin America is evident.

III. Gender Identity

A. International Standards

The United Nations outlines in the Universal Declaration of Human Rights the equality among all people to live free of discrimination of any kind.⁹¹ Specifically, Article 2 lists numerous attributes of a person that may not be discriminated against and creates inclusive language by stating, “or other status” which can be applied to a number of attributes including gender identity.⁹² Additionally, Article 12 of the Declaration describes

⁸⁴ CCPR- Aireana, Akahata, Synergia & SRI Report.

⁸⁵ *Id.*

⁸⁶ Paraguay survey response

⁸⁷ <https://freedomhouse.org/report/freedom-world/2018/jamaica>.

⁸⁸ JFLAG Shadow Report.

⁸⁹ <https://arc-international.net/global-advocacy/universal-periodic-review/>.

⁹⁰ <https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/>.

⁹¹ <https://www.un.org/en/universal-declaration-human-rights/index.html>.

⁹² *Id.*

the rights to privacy and honor, which a person should not be arbitrarily stripped of such as facing discrimination for their personal lifestyle.⁹³

In January 2018, The Inter-American Court stated, “the prohibition to discriminate on the grounds of gender identity is understood not only with regard to the real or self-perceived identity, but also in relation to the identity perceived externally, regardless of whether or not that perception corresponds to the reality.”⁹⁴ Thus, it should be understood that any expression of gender [also] constitutes a category protected by Article 1(1) of the American Convention.”⁹⁵

The standards set forth by numerous international bodies are clearly in support of protections for gender identity and expression, which member states should adhere.

B. Findings

There is limited data on gender identity violations within the Caribbean outside of violence reports. There are positive efforts happening in Cuba and the Bahamas.⁹⁶ The National Centre for Sexual Education (CENESEX) leads numerous initiatives inside Cuba to combat discrimination on the basis of sexual orientation and gender identity.⁹⁷ However, most of the Caribbean is not inclusive of gender identity rights. Troubling reports come out of Jamaica where trans women are considered men within Jamaican law.⁹⁸ This means that men who rape trans women cannot be convicted of rape, but only the lesser offence of indecent assault.⁹⁹

In Latin America acceptance for gender identity varies per State and by regions within In each State.

In Argentina, there has been success since 2012 by establishing National Law No. 26,743 of Gender Identity.¹⁰⁰ The survey reported, the law “is a depathologizing law

⁹³ *Id.*

⁹⁴ https://www.asil.org/insights/volume/22/issue/9/inter-american-court-human-rights-advisory-opinion-gender-identity-and#_edn19.

⁹⁵ *Id.*

⁹⁶ (Political officials have condemned violence and discrimination based on sexual orientation). <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>.

⁹⁷ *Id.*

⁹⁸ JFLAG Shadow Report

⁹⁹ *Id.*

¹⁰⁰ See Appendix for Argentina survey response.

that protects individuals and does not require any kind of demonstration of gender or sexual orientation: it is based on the concepts of the Yogyakarta Principles on the self-perception of gender identity.”¹⁰¹

In Uruguay, the country created mandates in 2018 for hiring of trans people and creating easier methods to change gender on official documents.¹⁰² These initiatives received push back but in too small a form to consider rolling back the new law.¹⁰³

In Honduras, the survey response described struggles for trans women due to the inability to change name and legal gender on personal documents.¹⁰⁴ This creates issues for conjugal visitation rights, political presentation of self in registering, and the personal role of being authentic within one’s own community.¹⁰⁵

In Paraguay, the survey response exposed a lack of gender identity laws and the inability to legally complete a name change.¹⁰⁶

Overall, there remains a need for support and protections in gender identity issues.

Violence

A. International Standards

Violence in any form violates one’s right to life. Article 6 of the ICCPR states that: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of . . . life.”¹⁰⁷ The right to life establishes a negative duty to prevent actions that deprive a person of life based on their sexual orientation, and a positive duty to deter, prevent and punish perpetrators and address negative attitudes that encourage

¹⁰¹ *Id.*

¹⁰² <https://www.reuters.com/article/us-uruguay-rights-vote/effort-to-roll-back-transgender-rights-fails-in-uruguay-idUSKCN1UV2EV>.

¹⁰³ *Id.*

¹⁰⁴ See Appendix for Honduras survey response.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ ICCPR, § 6.

violence.¹⁰⁸ The HRC notes that parties to the ICCPR must take measures to prevent and punish violators by enacting and prosecuting them under criminal legislation.¹⁰⁹

Individuals also have the right to be free from cruel, inhumane or degrading treatment under Article 7, which protects both the inherent dignity and the physical and mental integrity of every human being.¹¹⁰ The UN General Assembly has affirmed that the States must ensure the protection of all people and called on all States to “investigate promptly and thoroughly all cases of killings . . . committed for any discriminatory reason, including sexual orientation . . .”¹¹¹ Further, the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment states that members of sexual minorities are “disproportionately subjected to torture and other forms of ill-treatment ... and have been subjected to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.”¹¹² Further, failure by State authorities to investigate and punish violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by Article 3 of the Universal Declaration of Human Rights.¹¹³

Finally, violence is a major obstacle to the right to health. In 1996, the World Health Assembly declared violence as “a leading worldwide public health problem.”¹¹⁴ Violence is harmful and detrimental to the physical and mental health of human beings. The human rights approach ensures to include all types of violence in a conscious effort against typifying it which implies that less severe types of violence, such as domestic violence or correctional rape, is not harmful.¹¹⁵

¹⁰⁸ *International Commission of Jurists, Sexual Orientation, Gender Identity and International Human Rights Law*, Practitioners Guide No.4.

¹⁰⁹ See ICCPR, § 7.

¹¹⁰ ICCPR, § 7.

¹¹¹ General Assembly, Resolution 57/214, Extrajudicial, summary or arbitrary executions.

¹¹² *Report of the Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment*, U.N. Doc. No. A/56/156 (3 July 2001).

¹¹³ Universal Declaration of Human Rights, Article 3 (“Everyone has the right to life, liberty and security of person.”).

¹¹⁴ World Health Assembly resolution 49.25 (1996).

¹¹⁵ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Dainius Pūras (2 Apr. 2015).

B. Findings

It is apparent that violence is wide-spread throughout Latin America and the Caribbean, regardless of whether or not there are protections. Studies have shown that lesbian women are particularly at risk of sexual violence due to misogyny and gender inequality.¹¹⁶ It is likely that the lack of statistics and case studies for some countries is a result of a failure to report rather than an absence of violence. This failure might be due to fear of repercussions, a lack of available resources, both, or other circumstances.

Conversion therapy is banned in Argentina, Uruguay, Brazil, Bolivia, Peru, Ecuador, Nicaragua, The Bahamas, and Mexico.¹¹⁷ It is not banned in Venezuela, Colombia, Costa Rica, Guyana, Panama, Paraguay, Chile, Guatemala, Honduras, Cuba, Suriname, Grenada, Dominica, Haiti, Jamaica, Antigua and Barbuda, Saint Lucia, Barbados, St Vincent and the Grenadines, Trinidad and Tobago, and the Dominican Republic.¹¹⁸

There are protections against LGBT hate crimes in Uruguay, Mexico, Bolivia, some jurisdictions in Brazil, Peru, Suriname, Argentina, Ecuador, Venezuela, and Chile. Specific legislation protecting against LGBT hate crimes do not seem to exist in Nicaragua, The Bahamas, Colombia, Costa Rica, Guyana, Panama, Paraguay, Guatemala, Honduras, Cuba, Grenada, Dominica, Jamaica, Antigua and Barbuda, Saint Lucia, Barbados, St Vincent & the Grenadines, Trinidad & Tobago, Haiti, and the Dominican Republic. Often, the lack of protection results in the inability to have a thorough investigation within the criminal justice system of the specific forms of violence experienced by the LGBT community.¹¹⁹ While protections might help the spread of violence, it is clear that they have not eradicated the issue:

In Chile, lesbian women are more likely than gay men to be discriminated and victimized in or near their homes than in public.¹²⁰ For instance, the IACHR received information on 14-year-old Chilean girl who was abused sexually by her stepfather

¹¹⁶ https://www.oas.org/en/iachr/media_center/PReleases/2019/065.asp.

¹¹⁷ <https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/>.

¹¹⁸ *Id.*

¹¹⁹ <https://www.refworld.org/pdfid/55a3bb984.pdf>.

¹²⁰ https://www.researchgate.net/publication/287274879_Discrimination_and_victimization_against_gay_men_and_lesbians_in_Chile_Two_patterns_or_just_one.

because she was a lesbian and beaten by her biological father for the same reason.¹²¹ The gender sphere in Chile seems to be an integral reason for gender violence. Studies have shown that men seem to be higher victims of violence because they shown a more generically atypical appearance than lesbians, whereas sexuality between two women is often associated with pornography for heterosexual men, which normalizes their sexual status and results in less victimization.¹²² However, there is a portion of Chile which has a high concentration of lesbian violence - the Valparaíso region, also called the Red Zone. A resident stated, “. . . we are on high alert here, because of lesbophobia.” The most recent violent attack took place on March 17, 2019, in a square in Valparaíso city, when “a group of young men shouted lesbophobic expletives as they whipped a young camionera with chains, leaving [a lesbian woman] bloodied and badly shaken.”¹²³

In Brazil, there is no national law criminalizing hatred or violence. Every 20 hours an LGBTQI person is brutally murdered because of LGBTQI-phobia in Brazil.¹²⁴ Vanusa da Cunha Ferreira, a 36-year-old lesbian, was killed on January 19, 2019, in the Brazilian state of Goiás.¹²⁵ The perpetrator confessed that he tried to rape the victim to change her sexual orientation and then killed her to stop her from struggling.¹²⁶ The cause of death was multiple blows to the head.¹²⁷

In Colombia, the IACHR is particularly concerned about the intersecting forms of discrimination faced by lesbian afro-descendent women. The President of the IACHR also received testimony about threats to lesbian LGBTI representatives who are working to implement the Victims Law.¹²⁸ Threats have been to the women, family members and partners via text messages or calls, giving them three months to leave their communities.¹²⁹

¹²¹ http://www.oas.org/en/iachr/media_center/PReleases/2019/065.asp.

¹²² https://www.researchgate.net/publication/287274879_Discrimination_and_victimization_against_gay_men_and_lesbians_in_Chile_Two_patterns_or_just_one.

¹²³ <https://www.bbc.com/news/stories-48719453>.

¹²⁴ <https://outrightinternational.org/content/one-step-closer-criminalization-homophobia-and-transphobia-brazil>.

¹²⁵ http://www.oas.org/en/iachr/media_center/PReleases/2019/065.asp.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap5-Colombia.pdf>.

¹²⁹ *Id.*

In Honduras, studies have shown that lesbian and trans women experience violence through prejudices, norms and social practices.¹³⁰ However, the deadly violence remains small compared to other targeted groups. Between 2009 and 2015, 15 lesbians were violently murdered, compared to 90 gay men and 69 transgender people.¹³¹ Less than one fourth of the total deaths were prosecuted.¹³² Lesbians in prison are also subjected to different forms of violence. The Honduras survey response stated that LB women can be punished for up to three days in solitary confinement due to their sexual orientation.¹³³ In Tamara specifically, prisoners are punished for being a lesbian, which is motivated by the religious fundamentalism imposed by the established churches inside the penal center.¹³⁴ The survey further states that lesbian women are forced to cut their hair, are subjected to inhumane treatment and are sexually harassed by the coordinators of the penal centers under the belief that their sexual orientation is a waste for men.¹³⁵

In Paraguay, the survey response stated that there are some cases of violence, but they are not reported. Violence also exists within the family: there are several cases every year regarding teenagers and young lesbians whose families isolate them, prevent them from even studying or working, and forcing them to be with men.¹³⁶

In Argentina, the law protecting against hate crimes due to gender identity has had an unsatisfactory effect and has not fully protected against institutional violence. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity found that “institutional violence is pervasive in Argentina, historically deep rooted in society and lies at the heart of the problem of violence and discrimination based on sexual orientation and gender identity. A major dilemma is impunity for perpetrators compounded by difficulties facing victims and survivors who try to access the justice system.”¹³⁷ The Argentina survey response stated that “physical attacks are less frequent but during the last 4 years,

¹³⁰ <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Appendix for Honduras survey response.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21348&LangID=E>.

during the Macri government, there was a strong installation of a social climate and an official discourse of intolerance and discrimination with marked homophobic, lesbophobic, transphobic and biphobic, as well as xenophobic, Racists and classists. . . [which] resulted in an alarming increase in physical attacks against LGBT people, both at the hands of individuals and police.” Violence also occurs within the household. The most resonant case was the murder in 2016 of Marcela Crelez, a 54-year-old lesbian, at the hands of her own mother, an elderly woman who stabbed her shortly after Marcela began living with another woman.¹³⁸ However, violence is greater in cases of adolescents and is usually verbal and psychological.¹³⁹ Physical violence is not as common but does appear.¹⁴⁰

In Jamaica, the Inter-American Commission on Human Rights actually acknowledged that the law legitimizes violence towards LGBTI persons.¹⁴¹ Women do not believe that the justice system will help them.¹⁴²

In Barbados, activists state that many are open about their sexual orientation or gender identity, but police disapproval and societal discrimination make them vulnerable to threats, crime, and destruction of property.¹⁴³ Government-owned public networks perpetuate this discrimination - national radio stations air homophobic songs and material that incorporate discriminatory slurs.¹⁴⁴ In one violcase, a Barbados bus driver and fellow passengers allegedly verbally abused a female passenger after identifying her as a lesbian.¹⁴⁵ The driver stated that her throat should be cut, and none of the passengers objected.¹⁴⁶

¹³⁸ See Appendix for Argentina survey response.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ <https://www.state.gov/wp-content/uploads/2019/03/JAMAICA-2018.pdf>.

¹⁴² <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>.

¹⁴³ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/barbados/>.

¹⁴⁴ https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRB/INT_CEDAW_NGO_BRB_27711_E.pdf.

¹⁴⁵ <https://www.humandignitytrust.org/country-profile/barbados/>.

¹⁴⁶ *Id.*

Corrective rape and corrective clinics seem to be big issues that are plaguing women.

In Argentina, the survey described a case of Higua (Eva Analía) de Jesús, who was harassed, ambushed and raped in his neighborhood by a gang.¹⁴⁷ Higua lives in a suburb of Buenos Aires and is a male lesbian known for playing football.¹⁴⁸ “On many occasions they stoned her house and tried to burn the house. The violence escalated and on October 16, 2016, when the gang tried to rape her in a group, shouting ‘I’m going to make you feel woman, lesbian.’ She defended herself, causing the death of one of her attackers, who in turn thought she was dead and fled, leaving her and the aggressor. She was imprisoned first at the police station, without medical attention, and then transferred to the jail pending trial for homicide, but after an intense mobilization of lesbian activism and some [aliadxs], she was lifted in custody pending a trial where she is now he is asking for his acquittal claiming legitimate defense. Higua de Jesús is a person with low economic resources and little access to information, he would not have been able to face the false accusation or obtain his release if it were not for the mobilization of lesbian activism, which also got him a lawyer. The oral trial was going to be in April 2019, but it was postponed.”¹⁴⁹

In Barbados, corrective rape continues to be an issue to specifically target lesbian, bisexual and trans women. One woman said that “men feel like they can take advantage of women who might not conform.”¹⁵⁰ Women struggle to be taken seriously when reporting attacks. “Earlier this year there was a report in a gossip column where lesbian was raped,” one woman explains. “The title was ‘masculine woman gets a taste of male medicine,’ it was awful – her rape became a national joke.”¹⁵¹ In May, a newspaper called Nation wrote an article referring to the rape of a person who was either a gender non-conforming woman or transgender man, as “male medicine.”¹⁵²

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ <https://www.dazeddigital.com/life-culture/article/38491/1/the-queer-caribbean-women-fighting-a-vital-dangerous-culture-war>.

¹⁵¹ *Id.*

¹⁵² <https://www.humandignitytrust.org/country-profile/barbados/>.

In Belize, women have experienced sexual harassment as a result of the idea that if they have sex with a straight man their lesbianism would go away.¹⁵³ This seems to be compounded for bisexual women: lesbian women between the age of 25-34 years have felt safe coming out, but bisexual women in the same age range report feeling unsafe.¹⁵⁴

In Colombia, several women have been subjected to corrective rape by armed groups in the areas where they live or from which they have been displaced, with the aim of punishing them and "changing" their sexual orientation.¹⁵⁵ Further, the Commission learned during the Colombia visit of a Afro-descendent woman who told her father that she was a lesbian when she was 11 years old.¹⁵⁶ After, she was reportedly subjected to repeated rapes by her fathers' friends for a period of 14 years, which resulted in five pregnancies.¹⁵⁷ After the young woman escaped, she claims she was raped by members of illegal armed groups as a form of punishment for her sexual orientation.¹⁵⁸

In Jamaica, corrective rape is not defined within Jamaica's criminal laws. In 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days and raped repeatedly day after day by different religious men in the attempt "to make her take men" and "live as God instructed."¹⁵⁹

In Paraguay, there are cases of corrective rape, but there is no denouncement of the act either in the press or through judicial action.¹⁶⁰

In Ecuador, the use of secretive corrective clinics has been brought to light. Activists state that "gay people, mostly lesbians, are typically admitted to clinics by their parents or other relatives and held against their will for at least three months, with

¹⁵³ <http://www.7newsbelize.com/sstory.php?nid=23029&frmsrch=1>.

¹⁵⁴ https://ourcirclebze.weebly.com/uploads/5/2/2/6/52260211/needs_assessment_report_final.pdf.

¹⁵⁵ *Id.*

¹⁵⁶ <https://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ <https://www.refworld.org/pdfid/55a3bb984.pdf>.

¹⁶⁰ See Appendix for Paraguay survey response.

therapy costing up to \$1,500 a month.”¹⁶¹ There are numerous reports of LB women being held by involuntary confinement within “treatment centers” that claim to cure homosexuality.¹⁶² These centers for addiction treatment and therapies often operate without a license and commit acts of torture by administering drugs without consent, sexual abuse, verbal abuse, and physical abuse committed by the employees.¹⁶³ A testimony of this abuse comes from Ana, who was drugged by her mother and sister when she was visiting them, and then taken to a “cure” center.¹⁶⁴ When friends reported her missing to the police, they were faced with indifference rather than support.¹⁶⁵ The prosecutor assigned to the case refused to conduct an investigation, claiming that the confinement was a demonstration by Ana’s family of their concern for her well-being.¹⁶⁶

Police, law enforcement, and the justice system seem to perpetuate the violence or refuse to help victims.

In Argentina, the survey response stated that “the most notable incident was the prosecution of Marian Gómez, a male lesbian who was kissing with her partner in a large busy subway terminal, in October 2017. The police officer who wanted to arrest her alleges that it was because she was smoking in a forbidden place; however, many other people were smoking and nobody told them anything. She resisted, an incident originated because the policeman wanted to stop her, a policewoman intervened, Marian defended herself and ended with a judicial case accused of disrespect to the authority and serious injuries for having pulled a lock of hair from the police woman, a cover incongruous with the damage and that shows a clear lesbophobic bias. There was a huge campaign of the lesbian movement denouncing this situation and demanding the annulment of the cause. However, he

¹⁶¹ https://www.huffpost.com/entry/ecuador-sexual-violence-gay-men_n_5a7cd167e4b08dfc93022c1d.

¹⁶² CPM – Taller de Comunicación Mujer, Akahatá – Equipo de trabajo en sexualidades y géneros, Synergia - Initiatives for Human Rights, SRI – Sexual Rights Initiative, *Violations of Human Rights of LGBTI Women and of Women in Ecuador- List of suggested issues presented to the Working Group on Ecuador’s Report*, Committee on the Elimination of Discrimination against Women, 74 Meeting of the Working Group prior to the Session, March 11-15, 2019.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

went to the oral trial in June 2019 and received a one-year prison sentence in suspense (which implies that for any minor offense the conviction can be effective and that he has a criminal record for ten years).¹⁶⁷

In Barbados, A female LGBTQ individual reported, "When I interact with the police, it ends up being about my sexuality rather than the incident. I can't find justice. Safety and justice are things that are so basic. [Does this mean] I can't count on you (the police) to protect me from being shot because I am a lesbian?"¹⁶⁸

In Saint Kitts and Nevis, police do not take lesbian women seriously when they attempt to report violence or crimes. One woman says, "In October 2016, my ex-girlfriend took my passport and I went to the police to get help to take it back. The police officer said 'I saw you on Facebook together, who is the man and who is the woman?' He laughed it off. I felt like we don't get respect at all. Everything gets down to a sexual act. Who is on top and who is on bottom? I was so disappointed. For me it doesn't make sense to report the policeman to the police."¹⁶⁹

In Jamaica, A 2011 shadow report submitted to the UN Human Rights Committee by a coalition of organizations indicates that authorities are "unresponsive" regarding cases of violence against lesbians and that many lesbians and transgender people "are afraid to report sexual crimes committed against them for fear that the police will perpetuate the abuse or humiliate them."¹⁷⁰ This seems to be true. For instance, in 2013, a 31-year old lesbian woman was shot by a police officer.¹⁷¹ According to the victim's father, Winston Tulloch, "Royal got into an altercation with a man who called her a 'sodomite' (anti-gay slur) and punched her in the face. She then proceeded to chase her attacker with a knife. The man ran to a police officer at the Texaco Gas station. While running towards the police officer and her attacker, the police officer shot her in her arm and she fell to the ground. The police then opened fire and shot her a second time in her chest."¹⁷² Mr. Tulloch claims "the man who

¹⁶⁷ See Appendix for Argentina survey response.

¹⁶⁸ https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRB/INT_CEDAW_NGO_BRB_27711_E.pdf.

¹⁶⁹ https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

¹⁷⁰ <https://www.refworld.org/pdfid/52a6f6cc4.pdf>.

¹⁷¹ <https://www.refworld.org/pdfid/55a3bb984.pdf>.

¹⁷² *Id.*

physically attacked her was pressured by the police officer to pursue criminal charges against her.”¹⁷³ In another case, a lesbian woman was verbally assaulted and physically attacked while a police officer stood nearby and did not intervene.¹⁷⁴ When she drew her knife in self defense, the officer shot her twice, was arrested, and charged for assault even though her attacker was not wounded or charged.¹⁷⁵

In Haiti, some LGBTI groups reported that HNP and judicial authorities were inconsistent in their willingness to document or investigate LGBTI persons’ claims of abuse. For instance, in July 2013, a lesbian was attacked by two men when she tried to enter her home.¹⁷⁶ She was forced to leave her home later when neighbors began throwing rocks and threatening to burn down her home.¹⁷⁷ She did not report the incident to the police because she believed they would ignore her complaint and harass her for being a homosexual.¹⁷⁸ Further, in September 2012, a woman was beaten to death with a motorcycle chain by her boyfriend after he discovered that she is a lesbian.¹⁷⁹ In court, the man said that she killed her because she brought women into the home when he instructed otherwise.¹⁸⁰ The judge, who found the killer not guilty, called the woman “a vagabond and a delinquent.”¹⁸¹ Lastly, several lesbian individuals reported gang rapes committed by policemen.¹⁸²

In Venezuela, it is unclear if violence is prevalent due to a lack of reporting. In *C.L.Q. (Re) [1996] C.R.D.D. No. 145*, the review board conceded that the dearth of documentary evidence on lesbians in Venezuela could be attributed to the overall invisibility of the group.¹⁸³ In this case, a lesbian had been detained by police, threatened with rape and sexually touched.¹⁸⁴ The Board accepted evidence

¹⁷³ *Id.*

¹⁷⁴ <http://qcjm.org>.

¹⁷⁵ *Id.*

¹⁷⁶ https://www.madre.org/sites/default/files/PDFs/Haiti%20UPR%20Submission_26th%20Session_March%202016-English.pdf.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ https://ihrp.law.utoronto.ca/utfl_file/count/media/Venezuela%20Report-%20Final.pdf.

¹⁸⁴ *Id.*

showing the subjection of gay people to police harassment and violence.¹⁸⁵ Unfortunately, the law that the claim was brought under, *Loy Sobre Vagos y Maleantes*, has since been repealed.¹⁸⁶

Despite all of this violence, there has been some positive movements in legislation and policies to combat violence:

In Argentina, the National Law No. 26,657 on the Right to the Protection of Mental Health was implemented in 2010, which prohibits the forced hospitalization of patients in psychiatric institutions, they must always have their consent or that of their legal representative.¹⁸⁷ In addition, it expressly prohibits the conduct of mental health diagnoses on the exclusive basis of sexual choice or identity.¹⁸⁸

In Uruguay, Article 149 of the Penal Code specifically criminalizes incitement to hatred or any form of violence based on sexual orientation. Article 28 of the Law on Audio Visual Communication Services was established in 2015, which prohibits the dissemination of content which promotes or incites to violence based on sexual orientation.¹⁸⁹

In Brazil, the government established the Superintendência de Prevenção à Violência (SPREV) to prevent and control violence against vulnerable groups.¹⁹⁰ SPREV is divided into two departments.¹⁹¹ The first is Community Policing, which provides guidance on community policing principles and works to address violence in at-risk communities.¹⁹² The second is Human Rights, which trains security officers and coordinates interventions among other agencies.¹⁹³ Human Rights also created a working group to train officers for specific vulnerable groups.¹⁹⁴ In 2014, the World

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See Appendix for Argentina survey response.

¹⁸⁸ *Id.*

¹⁸⁹ State Sponsored Homophobia Report 2019.

¹⁹⁰ <https://www.paho.org/hq/dmdocuments/2017/violence-against-women-2017-03ws-vawg-resource-guide-sexual-gender-minority-women.pdf>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Bank delivered a development policy loan for \$400 million to promote social inclusion and assist in SREV's implementation.¹⁹⁵

In Colombia, Angélica Lozano Correa became the first openly lesbian national legislator in 2014 as a representative in the Colombian House of Representatives.¹⁹⁶ She is an advocate for LGBT rights, civil rights and women's rights, and has taken part in a USAID-backed training program to encourage LGBT people to become involved in politics.¹⁹⁷ She continues to confront resistance from the Senate, where there is heavy opposition to LGBT rights.¹⁹⁸

In Paraguay, it is not legally possible for a family to interfere with a LB woman without her consent in a psychiatric institution due to her sexual orientation.¹⁹⁹ The Paraguay survey response stated that there was a case three years ago where a mother drugged her daughter (who was dating a transgender male) to take her to another city where she would get admitted, but there was intervention by the State to prevent success.²⁰⁰

In Haiti, HNP academy instructors taught police officers to respect the rights of all civilians without exception.²⁰¹ The curriculum was aimed at training new officers regarding crimes commonly committed against the LGBTI community.²⁰² As a result, there was a marked improvement in the efforts to address the needs of the LGBTI community.²⁰³

While some positive changes are taking place, a lot more needs to be done to combat violence. Violence against sexual minorities directly and indirectly affects almost every human right. While violence remains prevalent and programs or laws aren't in place to criminalize perpetrators, these countries will not be complying with international human

¹⁹⁵ *Id.*

¹⁹⁶ https://globalstudies.unc.edu/files/2015/04/LGBT_Report_LatAm_v8-copy.pdf.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See Appendix for Paraguay survey response.

²⁰⁰ *Id.*

²⁰¹ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/haiti/>.

²⁰² *Id.*

²⁰³ *Id.*

rights law. Steps need to be taken on the national and local levels to ensure the safety and comfort to every citizen, despite sexual orientation.

Familial Challenges

I. Recognition of Couples

A. International Standards

The IACHR noted in its advisory opinion that "states can adopt diverse types of administrative, judicial and legislative measures to ensure the rights of same-sex couples," and including marriage to same-sex couples same-sex couples is "the most simple and effective way" to ensure the standards set forth by the advisory opinion are met.²⁰⁴ The Court may exercise its jurisdiction over member states, which includes: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.²⁰⁵ In *Young v. Australia*²⁰⁶ and *X v. Columbia*²⁰⁷ it was found that excluding same-sex partners from any state-sponsored benefits offered to opposite-sex couples is discriminatory.

The Committee on the Rights of the Child (CRC) explains that a family structure most successful in child rearing focuses on nurturing and less with societal norms and further explains that family patterns are changing in many regions, with a greater acceptance of diversity in family size, parental roles and arrangements for bringing up children.²⁰⁸ The High Commissioner for Human Rights recommends State's remove discrimination by "providing legal recognition to same-sex couples and their children, ensuring that benefits

²⁰⁴ https://www.asil.org/insights/volume/22/issue/9/inter-american-court-human-rights-advisory-opinion-gender-identity-and#_edn19.

²⁰⁵ <https://ijrcenter.org/regional/inter-american-system/>.

²⁰⁶ *Young v. Australia* ("The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced.).

²⁰⁷ *X v. Columbia* ("The Committee finds that the State party has put forward no argument that might demonstrate that such a distinction between same-sex partners, who are not entitled to pension benefits, and unmarried heterosexual partners, who are so entitled, is reasonable and objective.").

²⁰⁸ CRC/C/GC/7/Rev.1, paras 15, 19.

traditionally accorded married partners – including those related to benefits, pensions, and taxation and inheritance – are accorded on a non-discriminatory basis”.²⁰⁹ Additionally, the American Convention on Human Rights requires countries to allow same-sex couples to access civil marriage, and all rights and benefits that derive from it.²¹⁰

B. Findings

The concept of recognition of couples spans far deeper than simply the recognition of marriage. Though this is a likely first step to improve the equality of LB women, the survey found that struggles still remain for same-sex couples. These issues include aging and the rights within nursing home care, conjugal visitation rights given to prisoners, and cases of domestic violence and the type of support given to lesbians. The most glaring issue is that even in countries that support same-sex marriage the laws of these countries do not necessarily support same-sex couples. The difference is when a person is unmarried but in a dating relationship, similar to that of a heterosexual couple, their rights are limited to non-existent until they become legally married. This can have adverse effects such as encouraging marriage unions before people are fully prepared or desire to marry, but feel the pressure to do so simply to enjoy the rights of heterosexual couples. Information regarding the rights of lesbian couples, beyond recognition of marriage, is extremely limited. The full picture of a person's life should be reviewed and how the current laws unduly burden a person's freedom should be examined.

The Caribbean, as a whole, fails to recognize same-sex marriage or couples.²¹¹ Efforts are being made to change these discriminatory practices. In Cuba, Article 46 in the family section of Cuba's constitution marriage was previously defined as between a man and a woman.²¹² In February 2019 at the National Assembly, an attempt to change the description of marriage to “two people” instead of between a man and a woman, but it was ultimately rejected.²¹³ The Dominican Republic has a responsibility to adhere to the guidance of the IAHRRC, but has not yet changed its discriminatory practices.²¹⁴

²⁰⁹ A/HRC/29/23, para. 79 (h).

²¹⁰ <https://www.hrw.org/news/2018/02/06/latin-america-could-lead-way-lgbt-rights-2018>.

²¹¹ World Population Review, *Countries where Gay Marriage is Legal 2019*, September 08, 2019, <http://worldpopulationreview.com/countries/countries-where-gay-marriage-is-legal/>.

²¹² https://www.cubanet.org/htdocs/ref/dis/const_92_e.htm.

²¹³ <https://www.pri.org/stories/2019-02-27/cuba-expands-rights-rejects-radical-change-updated-constitution>.

²¹⁴ <https://ijrcenter.org/regional/inter-american-system/>.

In Latin America, few states recognize same-sex marriage (Argentina, Uruguay, Columbia, Mexico, Ecuador, and Brazil) or civil unions (Chile and).²¹⁵ When a State legalizes same-sex marriage it creates obligations for same-sex couples to enjoy all the same privileges as heterosexual couples. This includes health care decisions, social security benefits, and inheritance among other privileges. It can be challenging to accommodate all of these new rights when the system has been structured by the hertero normative for so many years. For example, Mexico acknowledges its obligation to provide social security benefits to same-sex couples through the Mexican Social Security Institute (IMSS).²¹⁶ However, in practice this has proven to be a challenge as even the paperwork remains out of date in only using language describing opposite-sex couples (i.e., “the wife of the insured man” or the “husband of the insured woman”), and these reckless errors can lead to legal claims.²¹⁷

There is more pressure and movement occurring in the Latin American states than in the Caribbean to provide legal and social recognition of couples. However, there are still many countries resisting the change.

In Costa Rica, the supreme court in 2018 proclaimed it unconstitutional to prohibit same-sex marriage.²¹⁸ However, same-sex marriage has still not been legalized.²¹⁹ The court gave the state representatives 18 months to correct the laws.²²⁰ This offers a hopeful outlook to changes coming in the near future for recognition of same-sex couples.

In Honduras, the survey response explained that same-sex couples are not recognized even though same-sex intimacy is not criminalized.²²¹ In regard to inmate

²¹⁵ World Population Review, *Countries where Gay Marriage is Legal 2019*, September 08, 2019, <http://worldpopulationreview.com/countries/countries-where-gay-marriage-is-legal/>; Reuters, Ecuador approves same-sex marriage, June 13, 2019 <https://www.reuters.com/article/us-ecuador-lgbt-marriage/ecuador-approves-same-sex-marriage-as-lgbt-groups-hail-landmark-week-idUSKCN1TE1G0>.

²¹⁶ https://tbinternet.ohchr.org/Treaties/CCPR/Shared/Documents/MEX/INT_CCPR_ICS_MEX_17477_E.pdf.

²¹⁷ *Id.*

²¹⁸ <https://time.com/5363591/costa-rica-supreme-court-gay-marriage-ban/>.

²¹⁹ <https://qz.com/1288320/despite-its-catholic-roots-latin-america-has-become-an-unlikely-lgbt-rights/>

²²⁰ <https://www.bbc.com/news/world-latin-america-45138687>.

²²¹ See Appendix for Honduras survey response.

rights to conjugal visits, only visitation between people of different sex is permitted and thus denies LB women a right enjoyed by heterosexuals.²²²

In Paraguay, according to the survey response, same-sex couples are not recognized and the marriage of migrant or international lesbians are not recognized within the country, even if the marriage is recognized in another country.²²³

In Belize, neither marriage nor civil unions are recognized at this time.²²⁴ Under current Belizean law, a same-sex partner lacks the right to participate in decision-making for the health, life, and death decisions of his or her partner, and has no right to obtain or provide medical information in the event of an emergency or life-threatening condition, or in the case of temporary or permanent incapacity.²²⁵ Finally, regarding social security, the Social Security Act C 44 does not allow the same sex partners to be able to claim survivor's benefits. Further, the children are not "survivors" under Belize's laws if they are not biological or not adopted.²²⁶ The benefits would only be given to the legal next of kin, even if the same sex partner was the one who bore all the expenses of the deceased prior to his or her death.²²⁷

In Bolivia, same-sex couples are not permitted to be legally married nor are civil unions recognized and though attempts have been made to change this issue through legislation it has remained discriminatory.²²⁸

Moreover, in Nicaragua,²²⁹ Panama,²³⁰ Peru,²³¹ Suriname,²³² Guatemala,²³³ Guyana,²³⁴ and El Salvador,²³⁵ same-sex couples are not recognized. Failing to have this

²²² *Id.*

²²³ *Id.*

²²⁴ https://ourcirclebze.weebly.com/uploads/5/2/2/6/52260211/legal_handbook_for_lgbt_belizeans.pdf.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ <https://outrightinternational.org/content/belize-strengthening-lgbt-families-against-social-inequality>.

²²⁸ <https://www.as-coa.org/articles/explainer-lgbt-rights-latin-america-and-caribbean>.

²²⁹ <http://worldpopulationreview.com/countries/countries-where-gay-marriage-is-legal/>.

²³⁰ <https://www.washingtonblade.com/2018/01/17/panama-signals-will-comply-landmark-lgbt-rights-ruling>.

²³¹ https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf

²³² State-sponsored Homophobia Report 2019.

²³³ <https://www.hrw.org/news/2018/08/31/guatemala-reject-life-and-family-protection-law>.

²³⁴ <http://worldpopulationreview.com/countries/countries-where-gay-marriage-is-legal/>.

²³⁵ *Id.*

recognition places lesbians at a disadvantage to accessing basic rights that heterosexual couples enjoy such as a voice in medical decision, inheritance upon the death of a spouse, child custody concerns, as well as protections and recourse for domestic violence. States that are not in compliance with international standards of anti-discrimination policies should act quickly to reform these laws and come into compliance with these basic human rights.

II. Access to IVF and Adoption

A. International Standards

The Inter-American Court established in a landmark judgment that human rights treaties are living instruments and ruled that sexual orientation and gender identity were prohibited grounds for discrimination under Article 1(1) of the American Convention. The Court reviewed in detail the content of the obligations not to discriminate and to guarantee equality and the connection of these obligations to the rights to privacy and to family life.²³⁶ Further, Article 23 of the ICCPR provides that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”²³⁷ Therefore, discrimination between same-sex couples in any way is a violation of the right to family life. The Inter-American Court and the Commission have both held that the best interests of the child cannot be used in an attempt to justify decisions that discriminate against other people and their rights when the decisions are based on social stereotypes, preconceptions, and prejudices regarding groups of people.²³⁸ The Inter-American Court clarified that discrimination against any of the parents in a custody case does not further the best interests of the child, but rather serves to discriminate against the children involved.²³⁹ Lastly, the Human Rights Committee recognizes that various forms of families exist, and therefore asserted that state planning policies should not be discriminatory.²⁴⁰

²³⁶ <https://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>.

²³⁷ See ICCPR, § 23.

²³⁸ <https://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf>.

²³⁹ <https://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>.

²⁴⁰ Human Rights Comm., *General Comment 19: Protection of the family, the right to marriage and equality of the spouses*, at UN Doc. CCPR/C/GC/19, (27 July 1990), at ¶ 2, 5.

Regarding IVF, the IACHR ordered a series of noteworthy measures related to sexual and reproductive rights in its 2012 decision in the case of *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*.²⁴¹ In the *In-Vitro Fertilization* case, the Court ordered Costa Rica to “implement programs and permanent education and training courses on human rights, reproductive rights and non- discrimination.”²⁴² The Court addresses the right to reproductive and sexual autonomy in the context of the right to privacy under Articles 5(1), 7, 11(2) and 17(2), in conjunction with Article 1(1) of the American Convention.²⁴³ The Court invoked Article 16(e) of the Convention for the Elimination of All Forms of Discrimination Against Women, which guarantees the right of women to freely make decisions regarding children, as well as to have access to the information, education, and the means necessary to exercise this right.²⁴⁴ The Court concluded that the IVF prohibition violated the rights to privacy and to form a family under the American Convention.²⁴⁵ While this doesn’t pertain specifically to LB women, it can be inferred that “all women” would include women of all sexual orientations.

B. Findings

Same sex couples can adopt in Uruguay, some areas of Mexico, Chile, Brazil, Colombia, and Argentina. Only single parent adoption is legal in Venezuela, Belize, Peru, Costa Rica²⁴⁶, El Salvador, Nicaragua, Saint Kitts and Nevis. Second parent adoption is legal in Uruguay and Brazil. Same-sex adoption is not recognized in Guatemala, Suriname, Ecuador, Honduras, Paraguay, Jamaica, Saint Lucia, Saint Vincent, Trinidad and Tobago, Barbados, Haiti, Antigua and Barbuda, Bahamas, Dominica, and Grenada. There do not appear to be any laws in Bolivia, Guyana, Cuba, and the Dominican Republic.

²⁴¹ *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*.

²⁴² *Id.*

²⁴³ *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*.

²⁴⁴ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

²⁴⁵ *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*.

²⁴⁶ In 2018 Costa Rica's Supreme Court has ruled that the country's same-sex marriage ban is unconstitutional and discriminatory. The court ruling gives the country's legislators a time limit of 18 months to change the current law. When same-sex marriage is legalized officially then adoption by same-sex couples who are married should be permitted, <https://www.bbc.com/news/world-latin-america-45138687>.

There is little information on IVF or other reproductive technologies. Research and case studies show a wide variety of experiences and availability, as well as levels of acceptance regarding IVF for lesbian couples.

In Argentina, Law No. 26.862 on Comprehensive Access to Medical Assistance Procedures and Techniques for Medically Assisted Reproduction was enacted in 2013. This law ensures that same-sex couples are entitled to reproductive rights such as access to IVF, occupational health insurance, and access to private medical companies under the national health plan.²⁴⁷ However, access is usually limited by province, so if the woman is from a small city or town, they may be unable to access this insurance.²⁴⁸ Further, the Argentina survey response notes that there are a number of aspects that are not well contemplated or prescribed, and there is no entity that monitors its compliance and professionals often institute rules that are contrary to the law.²⁴⁹ For example, professionals deny the treatments on the grounds that women are indeed fertile (although the law does not require a diagnosis of infertility), and they set maximum age limits are set for access to treatments that are not in the law.²⁵⁰ Despite these difficulties, if a couple does go through IVF or artificial insemination, they will both be named on the birth certificate and the child can take both names, which ensures all rights and obligations for both mothers in relation to their children, care, food, financial support, shared tenure, and extension of benefits arising from labor law. Some non-pregnant mothers still face institutional discrimination regarding educational and health services.²⁵¹ Lastly, the new Civil and Commercial Code of the Nation extended joint adoption to all couples, whether or not married and regardless of your sexual orientation and/or gender identity.²⁵²

In Chile, a new type of public health plan that covered IVF was unveiled in 2019. However, this plan only included heterosexual couples, which contravenes the Friendly Settlement Agreement that created the duty to “include lesbian, bisexual

²⁴⁷ <https://foreignpolicy.com/2018/08/27/latin-americas-rights-riddle/>.

²⁴⁸ See Appendix for Argentina survey response.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

and transgender people in health policies aimed at women in order to effectively respond to the needs of these groups."²⁵³

In Belize, lesbian women can adopt or have a child via surrogacy or IVF, but there is no way for both partners to legally have the children as beneficiaries.²⁵⁴ The Registration of Births and Deaths Act C 157 makes no provision for non-traditional parents, so there is no way to have both women on a child's birth certificate.²⁵⁵ If a family chooses surrogacy, the agreements between same sex couples and a surrogate may not be binding in Belizean court.²⁵⁶ Finally, if a couple chooses birth through artificial insemination, there are no legislations or policies in place to protect them against custody battles.²⁵⁷

In Venezuela, lesbian couples are allowed access to IVF, though it seems to be rare and comes with challenges since both women cannot be recognized as parents due to the lack of marriage recognition. In the case of Giniveth Soto and Migdely Miranda, the challenge occurred after their marriage in Argentina. On their return to Venezuela, Giniveth donated an egg and had it placed in the womb of her wife.²⁵⁸ The couple said that they had to "analyze the option of self-exile, we'll go to Argentina to have him, we want him to have both last names, if here our marriage is not legalized."²⁵⁹ In the absence of equal marriage and regulations to assist motherhood in Venezuela, the only one that would be recognized as the mother of their son would be her partner because she is the one who is pregnant.²⁶⁰

In Nicaragua, same sex couples are explicitly banned from using fertility treatments to get pregnant.²⁶¹

²⁵³ <https://chiletoday.cl/site/fertilization-treatment-only-for-hetero-couples-in-chile/>.

²⁵⁴ <https://outrightinternational.org/content/belize-strengthening-lgbt-families-against-social-inequality>.

²⁵⁵ https://ourcirclebze.weebly.com/uploads/5/2/2/6/52260211/legal_handbook_for_lgbt_belizeans.pdf.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_CSS_VEN_20596_E.pdf.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ <https://www.glbtrt.ala.org/news/archives/1810>.

In Panama, surrogacy is technically available but there are no laws expressly permitting it.²⁶² Artificial insemination and IVF is available to lesbian couples.²⁶³

In Paraguay, IVF is permitted if the woman has the financial ability to pay.²⁶⁴ However, reproductive technologies are highly regulated and access to them can depend on the individual clinic.²⁶⁵ Further, the survey stated that sexual orientation is not considered when treating a pregnant woman since the National Plan for Sexual and Reproductive Health was established.²⁶⁶ The non-pregnant mother was not often a victim of discrimination by the health center or government, but rather by the biological family of the pregnant woman.²⁶⁷

There is additionally very little information on custody rights after a divorce when children are involved and the woman is a lesbian. It appears that women will not lose custody simply by being a lesbian, though no statistics could be found.

In Chile, the Court handed down a decision in relation to discrimination on the basis of sexual orientation and gender identity in the *Case of Atala Riffo and Daughters v. Chile*. The case involved Karen Atala, who lost custody over her daughters due to her sexual orientation.²⁶⁸ The Supreme Court of Chile justified its decision revoking Atala's custody in favor of the girls' father on the following grounds: (1) living in a same-sex household would subject the children to social discrimination; (2) the children be confused about of sexual roles; (3) Atala placed her own interests first by engaging in a same-sex relationship; and, (4) the children have a right to be raised in a traditional family.²⁶⁹ Inter-American Court considered that discrimination based on sexual orientation was prohibited under Article 1(1) of the American Convention, and that the conduct by the court was a violation to private life and protection of the

²⁶² <https://globalivf.com/directory/laws/panama/>.

²⁶³ <https://lezseetheworld.com/lesbian-friendly-panama/>.

²⁶⁴ See Appendix for Paraguay survey.

²⁶⁵ *Id.*

²⁶⁶ See Appendix for Paraguay survey.

²⁶⁷ See Appendix for Paraguay survey.

²⁶⁸ <https://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>.

²⁶⁹ *Id.*

family under Articles 11(2) and 17(1) of the American Convention.²⁷⁰ Despite this positive outcome, it is not clear how the case has affected cases that followed.

In Paraguay, if two mothers do have a child together and separate, there is no kind of legal guarantee or judicial or state services custom to ensure that their child continues to have contact with both.²⁷¹ However, the survey response stated that there were no known cases where children from a previous heterosexual marriage were taken away from the lesbian mother, and there are indeed cases where the children stay with the mother.²⁷² Discrimination in Paraguay seems to be in the legal realm rather than healthcare while pregnant.

In Barbados, when a lesbian woman divorced her husband, he and her family tried to deny her access to her son.²⁷³ However, the government agency in charge of child protection ultimately rejected their efforts as groundless.²⁷⁴ The mother stated, “They placed my boy in a government agency in charge of promoting and protecting children’s rights. They took my son there and started questioning him about what type of treatment he received from me, and if mom had any friends that were LGBT persons. They took him and he endured that for three months. Ultimately, the agency decided ‘We can’t remove him from his mom. There are no grounds for us to remove him.’ At the time my son was 10 years old.”²⁷⁵

While some countries seem to be moving towards a wide acceptance of all types of families, most need to implement sweeping changes in order to comply with international standards. The lack of recognition as a same-sex parent through reproductive technologies or adoption is discrimination and a violation of family life. Every person, despite sexual orientation, should have the opportunity to be a parent under the law, and receive all of the legal benefits and obligations of having a child.

²⁷⁰ *Id.*

²⁷¹ See Appendix for Paraguay survey.

²⁷² https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

Economic, Social, and Cultural Rights

I. Housing

A. International Standards

Adequate housing was recognized as part of the right to an adequate standard of living in article 25 (1) of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁷⁶ The housing must be habitable, accessible, culturally adequate, and provide services and infrastructure such as drinking water, heating, energy and lighting.²⁷⁷ Further, tenants should be given protection against forced evictions, as well as safeguards such as legal resources and remedies. The right to housing includes equal and non-discriminatory access.²⁷⁸ The ICESCR identifies non-exhaustive grounds to discrimination, including an “other status.” According to the Committee, “other status” may include sexual orientation. The impact of discrimination is compounded when an individual suffers double or multiple discrimination—for instance, on the basis of sex and sexual orientation, such as lesbian and bisexual individuals.

Access to adequate housing can be a precondition for the enjoyment of several human rights, including the rights to work, health, social security, vote, privacy or education. For instance, the right to work is impaired if the person has been relocated or unable to find new housing as a result of a forced eviction. Further, many schools and employment opportunities require proof of residence, which can limit access to voting and education. If the housing is inadequate regarding habitability, there can be drastic repercussions on the right to health.

²⁷⁶ International Covenant on Economic, Social and Cultural Rights, Art. 11, (“ . . . the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”).

²⁷⁷ Office of the United Nations High Commissioner for Human Rights, Right to Adequate Housing, https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

²⁷⁸ *Id.*

B. Findings

There are protections against discrimination due to sexual orientation or gender identity regarding housing applications and harassment by landlords in Uruguay, Mexico, Chile, Belize, Bolivia, Peru, Suriname, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua, and Cuba.

There are no protections against housing discrimination in Brazil, Venezuela, Guyana, Panama, Paraguay, Argentina, Guatemala, Jamaica, Saint Lucia, Barbados, Haiti, Antigua and Barbuda, Bahamas, Dominica, and Grenada. No information was found for Saint Kitts and Nevis, Saint Vincent, Trinidad and Tobago, and Dominican Republic; It is presumed that there are no protections since there was no affirmative laws were found.

No quantitative data was available, but a few case studies were found that describe the difficulty that lesbian and bisexual women face concerning the housing market:

In Argentina, the survey response noted that there are cases where LB women are denied rent or asked for higher prices or more conditions.²⁷⁹ From word of mouth, these situations seem more frequent depending on the addition of other minority features like class, skin color, employment, location, and whether they have children or pets.²⁸⁰

In Paraguay, there is no legal discrimination but there is discrimination in practice. The survey stated that there are cases in which rentals have been denied.²⁸¹ There have also been several cases of harassment of neighbors to lesbian couples.²⁸² For example, a neighbor poisoned a lesbian's pet, and the neighborhood commission said she could not take legal action.²⁸³ Further, she could not complain about excessive noise because she was a lesbian.²⁸⁴

In Jamaica, while there was no information found regarding lesbian and bisexual women, J-FLAG estimated that 100 LGBTI persons reported being forced to flee their

²⁷⁹ See Appendix for Argentina survey response.

²⁸⁰ *Id.*

²⁸¹ See Appendix for Paraguay survey.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

homes and rendered homeless over the past six years; another group of approximately 30 individuals remained homeless in Kingston.²⁸⁵

In Haiti, it seems like LB women are regularly verbally harassed in their neighborhoods. For example, one lesbian was told that her neighborhood is “for poor people, not gays.” Others described being regularly followed during the day, with neighbors shouting threats and taunts.²⁸⁶ The discrimination does not stop at verbal harassment. In July 2013, two men approached a 27-year-old lesbian, hit her in the back of the head and tore her clothes as she tried to enter her home.²⁸⁷ They beat her while saying “Lesbians can’t come and live in this neighborhood... if you stay here we will burn down your house!”²⁸⁸ Later that evening, a group of neighbors threw rocks at her home and threatened to burn down her house.²⁸⁹ The woman did not report the incident to the police because she felt convinced the police would ignore her complaint, and harass her for being gay.²⁹⁰

While there is little specific data on housing discrimination in the Caribbean, the Committee on Economic, Social and Cultural Rights notes that discrimination often occurs in the private sphere, and in particular in the private housing sector. It stated that “actors in the private housing sector (e.g., private landlords, credit providers, and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of. . . sexual orientation . . .”²⁹¹

In Antigua and Barbuda, actors in the private housing sector may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation.²⁹²

²⁸⁵ <https://2009-2017.state.gov/j/drl/rls/hrrprt/humanrightsreport/index.htm?year=2015&dlid=253025#>.

²⁸⁶ <https://www.madre.org/sites/default/files/PDFs/Haiti%20ICCPR%20Report%20ENG%202014%20final.pdf>.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 11.

²⁹² UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html> [accessed 1 October 2019].

Any type of discrimination, whether violent, verbal, or creating limited access to housing, is against one's right to adequate housing. Every person deserves access to a place of their choice where they can be free from the fear of losing it.

II. Employment

A. International Standards

The international standards surrounding workplace and employment protections are directly related to the anti-discrimination practices set forth by the IACHR, which asserts that Article I includes protections for sexual orientation and gender identity.²⁹³ The International Labor Conference 108th session includes Lesbians in the bodies description of vulnerable groups subjected to workplace violence and harassment, and recommends this be remedied.²⁹⁴ Article 23 of the Universal Declaration of Human Rights highlights everyone's right to work without discrimination and for equal pay for equal work.²⁹⁵ The ICESCR Article VI explains that the right to work freely is a right to all people.²⁹⁶ Further, the United Nations Committee on Economic Social and Cultural Rights has made clear that the Covenant protects against discrimination of sexual orientation or gender identity.²⁹⁷ Member States are encouraged to provide these standards of protections equally to all of its citizens. Lastly, article 7 of the Covenant reads, "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

²⁹³ <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>.

²⁹⁴ https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/presentation/wcms_701433.pdf.

²⁹⁵ <https://www.un.org/en/universal-declaration-human-rights/index.html>.

²⁹⁶ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

²⁹⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 18 (right to work), at para. 12(b)(1).

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- (b) Safe and healthy working conditions;
 - (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
 - (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays²⁹⁸

B. Findings

The topic of employment specifically focused on LB experiences is limited in research. However, employment protection law has been a greatly advanced field that often tends to be highly inclusive. Protections for women will naturally benefit those who identify as LB, but discrimination appears to remain prevalent when a sexual orientation is revealed that goes against the normative. The impact goes beyond direct discrimination (i.e. refusal to hire) but can be subtle and found within a companies dress code policies, healthcare benefits, or medical leave for spouses. For countries that fail to recognize all couples equally there tends to follow additional discriminatory concerns that include the workplace. However, even in countries that do legalize same-sex marriage the impact on all other aspects of life can be challenging to gain protections for as well.

In Latin America there are several states that provide protections for sexual orientation within the workplace, including Uruguay, Chile, Belize, Bolivia, Brazil (by jurisdiction, not at a federal level), Peru, Venezuela, Suriname, Costa Rica, Mexico, Colombia, Ecuador, Honduras, and Argentina.²⁹⁹

For some countries with protections in place the reality of employment life for many LB women continues to be riddled with struggles.

In Mexico, the Federal Act to Prevent and Eliminate Discrimination prohibits employment discrimination in Article 9(IV), which lists “sexual preferences” as a protected class in Article 1(III). Article 149(II) of the Federal Criminal Code criminalizes employment discrimination based on sexual orientation and lists penalties for employers and public servants who violate this provision.³⁰⁰ However,

²⁹⁸ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

²⁹⁹ https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf.

³⁰⁰ State sponsored homophobia report 2019.

the reality of protections applied to LB women is unfortunately a different narrative. While many of these protections came into full effect in 2003, a report in 2014 showcased employment discrimination in hiring, promotion and retention as well as workplace harassment that included verbal and physical aggression.³⁰¹

In Costa Rica, protections against workplace discrimination based on sexual orientation exist, but discrimination continues in access to employment and throughout an LB woman's career. Some extreme cases have reported LB women workers being bullied, mobbed, and sexually or physically assaulted at place of employment or by someone associated with that employment.³⁰² It is common for women who are perceived to be "masculine" to suffer discrimination or harassment at their place of employment.³⁰³

In Honduras, it is illegal to discriminate in the workplace based on sexual orientation since 2013. However, according to the survey response, LB women face violent acts of discrimination throughout all aspects of their lives including employment.³⁰⁴

Countries without employment anti-discrimination protections for sexual orientation create a cycle of violence and poverty endured by LB women.

In Guyana, there are no protections explicitly against discrimination of sexual orientation or gender identity for employment. There are openly discriminatory practices happening among companies that may ask directly what a person's sexual orientation may be and then the company refuses to hire an LB candidate.³⁰⁵ In a shadow report developed by the Georgetown Human Rights Institute, a personal interview was captured with of a lesbian woman (Mia) who shared that during an interview for a management position she was asked directly, "[Are] you gay?"³⁰⁶ These questions have no implication on a person's ability to complete the job and

³⁰¹ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MEX/INT_CCPR_ICSMEX_17477_E.pdf

³⁰² https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_368962.pdf

³⁰³ *Id.*

³⁰⁴ See Appendix for Honduras survey response.

³⁰⁵ https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2018/05/Georgetown_LGBT_book_DigitalFINAL.pdf

³⁰⁶ *Id.*

thus are strictly for the purpose of discrimination. Further, LB women who are successful at obtaining employment endure bullying and hostile work environments that employers often contribute towards creating conditions that make it extremely difficult for an LB women to endure.³⁰⁷

In Paraguay, the survey response explained that a person can lose their job if discovered to be lesbian though the firing is not explicit in stating it for that reason.³⁰⁸ Because there are no protections against discrimination of sexual orientation LB women remain vulnerable to unemployment and poverty.³⁰⁹ If an LB woman obtains steady work, there are no healthcare provisions or leave of absence to care for an ill partner afforded to LB workers.³¹⁰ Further, there are many jobs that promote gender-centered roles within the company dress code such as customer service jobs, which are frequently filled by women making LB women who are non-gender conforming at risk of harassment or unemployment.³¹¹

In Guatemala, there is a lack of anti-discrimination protections for sexual orientation regarding employment. This violates the State's obligations under Articles 2(1) and 26 of the Covenant.³¹² Having a lack of protections creates a radically unsafe environment for LB women.³¹³

In El Salvador, a similar situation arises from lack of anti-discrimination protections that causes LB women to flee their State and seek asylum due to the struggles of unemployment and overwhelming violence.³¹⁴

In the Caribbean a few State's afford protections to LB women in the workplace.

³⁰⁷ *Id.*

³⁰⁸ See Appendix for Paraguay survey response.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT_CCPR_CSS_GTM_30350_E.pdf.

³¹³ <https://www.unhcr.org/en-us/5a2ee5a14.pdf>.

³¹⁴ *Id.*

In Cuba, the law prohibits workplace discrimination based on skin color, gender, religious belief, sexual orientation, nationality, "or any other distinction harmful to human dignity."³¹⁵

In Saint Kitts and Nevis, there is an expansive law protecting sexual orientation and gender identity that if employers violate they will face a monetary fine.³¹⁶

In Saint Lucia, protection has been granted to sexual orientation in the workforce since 2006.³¹⁷ However, civil society groups reported LGBTI persons were denied jobs or left jobs due to a hostile work environment.³¹⁸

Intolerance and discriminatory hiring practices are prevalent in the Caribbean including in Saint Vincent,³¹⁹ Grenada,³²⁰ Antigua and Barbuda,³²¹ Dominica,³²² and Trinidad and Tobago.³²³ Additional reports explore the societal cost of lacking in these protections within a country.

In Jamaica, the current anti-discrimination laws in place do not extend to protections for sexual orientation or gender identity.³²⁴ Since lesbian and bisexual women are especially vulnerable, it is possible that harassment is prevalent in the workforce.³²⁵ A J-FLAG 2015 study indicated that persons who tend to be more open about their LGBT status are more likely to be denied a job.³²⁶

³¹⁵ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/cuba/>.

³¹⁶ <https://preview.state.gov/reports/2018-country-reports-on-human-rights-practices/saint-kitts-and-nevis/>

³¹⁷ Article 131 of the Saint Lucia Labour Code bans "unfair dismissal" based on sexual orientation.

³¹⁸ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/saint-lucia/>

³¹⁹ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/saint-vincent-and-the-grenadines/>

³²⁰ *Id.*

³²¹ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/antigua-and-barbuda/>.

³²² <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominica/>.

³²³ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/trinidad-and-tobago/>.

³²⁴ Jamaicans for Justice.

³²⁵ https://www.researchgate.net/publication/265999405_Sexual_Harassment_and_Sexual_Harassment_Policy_in_Jamaica_The_Absence_of_a_National_Sexual_Harassment_Policy_and_the_Way_Forward, Jamaicans for Justice.

³²⁶ JFLAG Shadow Report.

In Haiti, a nationwide survey of 1,089 respondents found that “90 percent rejected the idea of equal rights for LGBT people and 75 percent said Haiti should ban gays and lesbians from entering the country.”³²⁷ The hope for equality within the workforce will sadly come second to the fight for the right to exist at all.

In the Dominican Republic, the law provides women and men the same legal rights, however women do not enjoy the social and economic status or the opportunity for these rights equal to that of men.³²⁸ Because the country fail to protect sexual orientation and gender identity, discrimination in employment and occupation occurs in volume among LB women, especially transgender persons.³²⁹

In Barbados, the lack of protections for sexual orientation for employment have heavy consequences for the lives of LB women. The lack of national legislation to offer protection to employees leaves LB women vulnerable to discrimination.³³⁰ LB women in Barbados have shared with civic members their experience stating, “[It is frustrating] for people to decide what I can and cannot do based on the way I look. You get passed over for jobs and for promotions you know you’re qualified for. I’ve had interviewed where in the middle the person got up and carried on a conversation; in another the interviewer shut down and stopped taking notes.”³³¹

In the Bahamas, women are a protected class generally free of economic discrimination, and the law provides for equal pay for equal work.³³² However, if sexual orientation is revealed discrimination and hostility is prevalent as this is not a protected category.³³³

There are some positive efforts are being made to create safe working conditions that welcome the talents of LB women.

³²⁷ "In Haiti, Slight Progress for LGBT Rights Seen as Victory". Voice of America.

<https://www.voanews.com/americas/haiti-slight-progress-lgbt-rights-seen-victory>.

³²⁸ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominican-republic/>.

³²⁹ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominican-republic/>.

³³⁰ https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRB/INT_CEDAW_NGO_BRB_27711_E.pdf.

³³¹ *Id.*

³³² <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/the-bahamas/>.

³³³ *Id.*

In Argentina, the survey highlighted a local branch of Pride Connections that has created a network of companies that offer training to promote the employment of people from the LGBT community.³³⁴ These transnational companies include Accenture, Bayer, Dow Chemical, ExxonMobil, GE, Gire (their local company Rapipago), HSBC, IBM, JP Morgan, L'Oréal, ManpowerGroup, SAP, Sodexo and TakoLab.³³⁵

However, in total LAC countries could do more to improve the working conditions of LB women by providing stronger protections against discrimination of sexual orientation.

III. Health

A. International Standards

Every human has the right to the highest attainable standard of health.³³⁶ This right is available to all people and is not limited to heterosexual, cis-gendered men and women.³³⁷ The right to health is protected under international human rights law through article 25 of the Universal Declaration of Human Rights and Article 12 of CEDAW.³³⁸

Further, health is protected under article 12 of the ICESCR. The United Nations Committee on Economic, Social and Cultural Rights states in General Comment No. 14 on the right to the highest attainable standard of health, that discrimination on any basis, including sexual orientation, is contrary to article 2(2) (non-discrimination) and article 3 (equal rights of men and women) of ICESCR.³³⁹ Freedoms include the right to control one's health and body to be free from interference, such as non-consensual medical treatment and experimentation.³⁴⁰

³³⁴ See Appendix for Argentina survey response.

³³⁵ *Id.*

³³⁶ No. 14 (Right to the highest attainable standard of health), at para. 1.

³³⁷ Harvard School of Public Health, Health and Human Rights Resource Guide (2013).

³³⁸ CEDAW, § 12. ("States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.").

³³⁹ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, E/C.12/2000/4 (August 11, 2000).

³⁴⁰ Harvard School of Public Health, Health and Human Rights Resource Guide (2013).

Regionally, health is protected under Article XI of American Declaration of the Rights and Duties of Man.³⁴¹

Access to the right to health must be non-discriminatory, as discrimination on the basis of sexual orientation and gender identity is prohibited.³⁴² In a recent statement PAHO director Dr. Carissa F Etienne said: “by universal health, we mean that everyone—irrespective of their socioeconomic background, ethnicity, gender or race— is covered by a well-financed, well-organized health system offering quality and comprehensive health services.”³⁴³

B. Findings

The Pan American Health Organization (PAHO) states that stigma and discrimination are major barriers to health for LGBT people throughout the Americas and Caribbean. However, there is little information known about the issues that face the lesbian community specifically. We believe that this is mainly because lesbian women are grouped within LGBT health studies which mainly, if not wholly, focus on issues relating to HIV. Research found general acknowledgement of discrimination in Chile, Bolivia, Costa Rica, Ecuador, Honduras, Panama, Barbados, and Cuba. Case studies in Guyana, El Salvador, Paraguay, and Jamaica have shown that lesbian and bisexual women can receive unequal treatment and difficulties accessing health care. Guides to good practice for lesbian women were not found.

In Argentina, the survey response indicates that a large access barrier is economic: many LB women have informal jobs without health coverage and public hospitals are in crisis after four years of neoliberal government.³⁴⁴ When women do have access, gynecological visits still begin with a presumption of heterosexuality - therefore, professionals do not have information on minority sexuality in order to guide safer sex practices or accurate information about the possibility of infection transmission.³⁴⁵ This lack of information may stem from a lack of research: the survey states that “there is no type of health research on the incidence or

³⁴¹ American Declaration of the Rights and Duties of Man § (“XI Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”).

³⁴² https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

³⁴³ *Id.*

³⁴⁴ Argentina survey response.

³⁴⁵ *Id.*

prevalence among lesbians and bisexuals of physical or mental illness, or addictions. There is also no research on what are the barriers to access to health care for lesbians and bisexuals: economic (due to lack of health insurance coverage, cost of medicines), heterosexist and lesbophobic prejudices, lack of information or erroneous information (many they believe that if they do not have sex with men they are not at risk of STI transmission), fear that sexual orientation will be revealed to third parties (especially if they are in the closet in front of relatives, friends, employers, if they live in small places, if they are teenagers, etc.), among other [others are] possible.³⁴⁶ This absence of information can have devastating effects on women: there are few visual indications for LB women that show the center is a safe space regarding medical information and rights, no guides of good practice, and no information regarding parental rights for LB women.³⁴⁷

In Guyana, a healthcare study identified common issues and feelings among sexual minority women. Women were shown to use healthcare infrequently attributed to fear of sexuality disclosure and feeling vulnerable and disrespected in the system. Further, the study shows that there are no discussions regarding sexual health and female preventative care.³⁴⁸

In El Salvador, LB women have said that gynecological services can be difficult to access because doctors refuse to treat them and say that they do not need care because they do not have sex with men.³⁴⁹ Lesbian women have also experienced sexual abuse while attempting to access healthcare.³⁵⁰

In Paraguay, the survey response stated that gynecological consultations often include discrimination ranging from misplaced comments to denial of attention.³⁵¹ However, there are gynecologists that do not discriminate.³⁵² The survey also

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ https://www.researchgate.net/publication/306526099_An_Exploration_of_the_Health_Care_Experiences_Encountered_by_Lesbian_and_Sexual_Minority_Women_in_Guyana.

³⁴⁹ <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/2017-HRI-Report-Uniformed-Injustice.pdf>.

³⁵⁰ <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/2017-HRI-Report-Uniformed-Injustice.pdf>.

³⁵¹ See Appendix for Paraguay survey response.

³⁵² *Id.*

confirmed that is no guide to good practices in lesbian or bisexual health care in Paraguay.³⁵³

In Jamaica, members of the LGBT community prefer to rely on the Jamaica AIDS Support for Life clinic rather than universal healthcare because the health system is unwelcoming and unaware of the specific needs of LGBT patients.³⁵⁴ Lesbian patients have specifically been targeted with limited access to STI testing and safe sex information due to the perceived low STI risk.³⁵⁵ Quantitative results revealed that a longer time since last STI test was “positively associated with depression, sexual stigma, and forced sex, and negatively associated with residential location, perceived STI risk, safer sex self-efficacy, and LGBT connectedness.”³⁵⁶ Regarding HIV/AIDS, there is also no intervention program or outreach specifically for lesbian and bisexual women from the organizations that work on the national HIV/AIDS response.³⁵⁷ The IACHR expresses concern over this omission given the incidences of corrective rape of lesbian and bisexual women that heightens their vulnerability to contracting HIV.³⁵⁸

In some cases, discrimination and violence has caused detrimental effects on LB women’s health:

In Mexico, LB women consume more alcohol and cigarettes during their youth compared to heterosexual woman, which is associated with discrimination and violence.³⁵⁹ Suicidal ideation has been directly and positively correlated.³⁶⁰ These negative effects are often from the rumination and suppression of the emotions produced from the discrimination or violence, rather than the experience itself.³⁶¹ Even if the women have no gone through specific harmful experiences, studies still

³⁵³ *Id.*

³⁵⁴ <https://2009-2017.state.gov/j/drl/rls/hrrprt/humanrightsreport/index.htm?year=2015&dclid=253025#>.

³⁵⁵ <https://www.tandfonline.com/doi/full/10.1080/09688080.2018.1517543>.

³⁵⁶ *Id.*

³⁵⁷ <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>.

³⁵⁸ *Id.*

³⁵⁹ <https://www.sciencedirect.com/science/article/pii/S0277953609002044?via%3Dihub>.

³⁶⁰ Ortiz-Hernández, L. (2005). Influencia de la opresión internalizada sobre la salud mental de bisexuales, lesbianas y homosexuales de la Ciudad de México. [Influence of internalized oppression on the mental health of bisexuals, lesbians, and homosexuals in Mexico City].

³⁶¹ http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0120-05342019000100019.

find that they have higher stress levels and distress compared to heterosexual people, which elevated social and cognitive problems.³⁶² Further, women who decide not to “come out” face even more health problems such as insecurity, fear, and uncertainty due to lack acceptance and fear of being discriminated against for not following heterosexual norms.³⁶³

There have been some positive movements:

In Jamaica, the Ministry of Health and J-FLAG trained more than 200 healthcare workers in 2014 and 2015 to sensitize them to LGBTI patients.³⁶⁴ These programs, public advocacy by other NGOs and international donors, and increased focus by the government on the public health issue of HIV/AIDS increased the number of LGBTI persons accessing public-sector health care facilities.³⁶⁵

In Venezuela, members of sexual minorities receive assistance from organizations like ACCSI, which provides psychological, legal and health assistance. However, it can be difficult to provide assistance to LGBT persons due to the lack of money needed to operate adequately.³⁶⁶

It is imperative that there is an intervention that addresses barriers to the healthcare system. Lesbian women are unable to receive the highest standard of attainable health if they are excluded from care or seen by doctors who are not well versed in lesbian-specific issues. Discrimination within the system also hinders access to health and increases the fear to utilize their right to healthcare. States will be compliant under International law standards only once these barriers are demolished.

IV. Education

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ <https://2009-2017.state.gov/j/drl/rls/hrrprt/humanrightsreport/index.htm?year=2015&dliid=253025#>.

³⁶⁵ *Id.*

³⁶⁶ <https://www.refworld.org/docid/53b126844.html>.

A. International Standards

The Universal Declaration of Human Rights stated in Article 26 that “everyone has the right to education.” Since then, this right has been reaffirmed in the UNESCO Convention Against Discrimination in Education, the ICESCR, CEDAW, and the CRC, as well as treaties that are not necessarily applicable to lesbian and bisexual women.³⁶⁷ General Comment No. 13 from the Committee on Economic, Social and Cultural Rights in regards to the right of education states that “educational institutions and programmes have to be accessible to everyone, without discrimination . . . especially the most vulnerable groups.”³⁶⁸

Regionally, the Charter of the Organization of American States pledges equality of opportunity and the expansion of educational opportunities for all people. According to Article 49, states have to ensure the effective exercise of the right to education. The Protocol of San Salvador guarantees the right to education in Article 13, and states that education should be accessible to all.³⁶⁹

B. Findings

Bullying and discrimination in schools based on sexual orientation and gender identity and expression adversely affects psychological health and can lead to depression, anxiety, low self-esteem, withdrawal, loneliness, guilt, sleep disturbance, alcohol and drug abuse, homelessness, self-harm, and even suicide.³⁷⁰ In school, children are more likely to miss activities, skip class or drop out, or achieve low academic results which will negatively affect their economic status in adulthood.³⁷¹ Students are bullied by peers and administrators. They are further discriminated against through the conscious effort to keep LGBT studies out of the curriculum.

³⁶⁷ Right to Education, *International Instruments* (last visited Oct. 31, 2019), https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Right_to_Education_2014.pdf.

³⁶⁸ Committee on Economic, Social, and Cultural Rights, *Implementation of the International Covenant on the Economic, Social and Cultural Rights*, General Comment No. 13 (Twenty-first session, 1999).

³⁶⁹ Additional Protocol to the American Convention on the Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador” (Nov. 17, 1988).

³⁷⁰ OHCHR, States must act to stop bullying of LGBT students, say UN experts (Oct. 4, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25105&LangID=E>.

³⁷¹ *Id.*

While there is very little information regarding only lesbian individuals, bullying is prevalent across the LGBT community. Physical and verbal bullying by other students has been seen in Jamaica, Mexico, Colombia, El Salvador, Honduras, Nicaragua and Argentina.³⁷² No applicable information was found for Caribbean countries. There was only one reported case study of bullying reported by a lesbian student:

In Mexico, a 2012 survey on homophobic bullying revealed that 50% of lesbians were victims of homophobic bullying.³⁷³ A young lesbian girl from Guerrero anonymously reported that the boys at her school refused to play with her, telling her she should accept that she is not a boy, stop being so weird and strange, and go play with the girls.³⁷⁴

Institutional discrimination such as expulsion, bullying, and exclusion was seen in Grenada, Argentina, Honduras, El Salvador, Guyana, Bolivia, Chile, Paraguay, and Mexico. There have been very few reported instances against lesbian women specifically:

In Chile, a 19 year old student, Mayra Espinoza, was expelled from the Jose Francisco de Vergara Lyceum at Viña del Mar when she was seen kissing another female classmate on the lips. The student was allowed to return to school after the urging of Congresswoman Laura Soto and members within the Ministry of Education, but she was forced to finish her studies early.³⁷⁵

In Colombia, students are punished for “being homosexuals” and “wearing the clothes of the opposite sex,” and their sexual orientation or gender identity is also associated with “serious moral flaws.”³⁷⁶

³⁷² See notes for details.

³⁷³ *Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report*, Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance (June 2014), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MEX/INT_CCPR_ICS_MEX_17477_E.pdf.

³⁷⁴ *Id.*

³⁷⁵ United Nations Human Rights Committee, *Chile's Breach of its Obligations under the International Covenant on Civil and Political Rights (ICCPR) to Protect the Rights of Sexual Minorities, Including Lesbian, Gay, Bisexual, and Transgender People* (March 2007). https://mckinneylaw.iu.edu/human-rights/_docs/shadow-reports/un-chile-2007.pdf.

³⁷⁶ CESCR 60 Colombia Caribe Afirmativo, Heartland Alliance for Human Needs & Human Rights, Akahatá 2017 report.

In Honduras, on September 2, 2019, Cattrachas was informed of a case of school discrimination based on sexual orientation against a lesbian student at the San José del Carmen Institute in Tegucigalpa. The student was suspended for eight days, had to graduate privately, and was separated from her group of classmates because administrators found photos of her kissing another woman on the cheek on social media. The photos were labeled "amoral" by the school authorities, being considered a "serious offense" to the "prestige" of the school.³⁷⁷

In addition to bullying, discrimination has been shown through the lack of available resources for LGBT students and textbooks that discuss the LB community:

In Argentina, the National Law No. 26,150 on Comprehensive Sex Education was enacted 2006, which recognizes and guarantees the right of all public and private students to receive comprehensive sex education at all educational levels.³⁷⁸ Despite the effort, the Argentina survey response stated that the application is still partial and very deficient, and the text of the law has been criticized as heterosexist and cissexual.³⁷⁹ There are training and specialization titles for teachers who have a more respectful perspective on LGBT sexualities and identities, but the implementation is up to the teacher.³⁸⁰

In Brazil, the mayor of Ariquemes presented a proposal to delete all references to sexual diversity in free textbooks for basic education.³⁸¹ He stated that the measure was intended to curb the "gender ideology" and prevent "further damage to the student learning."³⁸²

In Belize, the government has banned certain books and manuals that speak towards homosexuality from schools. In 2012, the Ministry of Education withdrew a handbook from schools across the country. The publication which stirred

³⁷⁷ Situation of Lesbian and Trans Women in Honduras, Cattrachas.

³⁷⁸ Argentina survey response.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Francisco Ide, *Alcalde de Brasil busca prohibir contenido homosexual en textos escolares*, elciudadano.com (Jan. 31, 2017), <https://www.elciudadano.com/tendencias/alcalde-de-brasil-busca-prohibir-contenido-homosexual-en-textos-escolares/01/31/>.

³⁸² *Id.*

controversy when it was learned that the subject matters being addressed promoted what the “homosexual agenda.”³⁸³

In Bolivia, the Minister of Education discussed the possibility that the right of sexual diversity might be included in the human rights curriculum within the “comprehensive sexuality in education” material.³⁸⁴ However, the president of the Junta Nacional de Padres de Familia, Franklin Gutiérrez, asserted that the majority of parents will oppose adding this material to the curriculum as it would affect the principles and values that the parents teach their children since parents do not believe children are born with a homosexual inclination.³⁸⁵

In Peru, the government recently withdrew a national school curriculum that was widely criticized for employing what critics have called “gender ideology.”³⁸⁶ The 2016 version of the national curriculum was criticized by parents who were upset by its apparent push for progressive ideals.³⁸⁷ While much of the new curriculum was based on biological gender equality rather than sexual orientation, it also included studies which showed that traditional gender roles are social constructs.³⁸⁸

Despite the prevalence of discrimination throughout Latin America and the Caribbean, there have been some positive movements:

In Argentina, there have been some instances of classmate support when lesbian couples are discriminated against by the school: The Argentina survey response notes that students tend to repudiate these acts.³⁸⁹ “In October 2019 the director of a religious school for women in the province of Tucumán prohibited two students

³⁸³ Asylum Research Center, *Belize: LGBTI, Country of origin information to support the adjudication of asylum claims from Lesbian, Gay, Bisexual, Transgender and Intersex (‘LGBTI’) asylum seekers* (Nov. 14, 2012), <https://www.refworld.org/pdfid/50af2ee72.pdf>.

³⁸⁴ Red TREBOL and Heartland Alliance for Human Needs & Human Rights, *The Human Rights Situation of Lesbian, Gay, Bisexual, Transgender Persons in Bolivia, Suggested List of Issues Submitted to the Country Report Task Force on Bolivia* (Jan. 2013), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BOL/INT_CCPR_NGO_BOL_14436_E.pdf.

³⁸⁵ *Id.*

³⁸⁶ The Economist, Latin America’s battle over “gender ideology” (Sept. 30, 2017), <https://www.economist.com/the-americas/2017/09/30/latin-americas-battle-over-gender-ideology>.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ Argentina survey response.

from entering classes after they were kissing at school (as well as heterosexual couples) and also communicated to mothers and fathers the sexual orientation of the girls. The good thing was that a good part of the other students organized a protest in the same school, supporting the sanctioned girls.”³⁹⁰ In May 2017, the director of a public school had banned two girls from holding hands during recess, even though they were married.³⁹¹ In response, most of the students organized a massive kiss in the schoolyard.³⁹²

In Costa Rica, there is an educational policy on the expression of human sexuality which incorporates sexual education into the school curriculum on a cross-cutting basis.³⁹³ Further, the civic education program now contains units on youth identity, sexual identity and diversity.³⁹⁴

In Ecuador, public policy measures relating to gender to sexual and gender diversity have been introduced in higher education, as part of a campaign entitled “Building Equality in Higher Education.”³⁹⁵

In Nicaragua, there is a Youth Advisory Council Program which works to challenge perceptions and change values so education is more accessible to all. They also provide youth counseling, which revolves around health, harmony, and coexistence while addressing LGBT rights.³⁹⁶

In Jamaica, the Ministry of Education announced revisions to its Safety and Security Guidelines to address bullying against LGBT students. Advocacy from LGBT groups about bullying against students prompted the revisions.³⁹⁷ However, some Jamaican groups protested Minister Thwaites’ explicit recognition of the problem of bullying

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ Universal Periodic Review, SOGIESC issues during Costa Rica’s 2nd UPR review, <https://arc-international.net/global-advocacy/universal-periodic-review/>.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ Gretchen Robleto, *Advocating for LGBT Youths’ Access to Education in Nicaragua* (June 28, 2018), <https://www.creativeassociatesinternational.com/stories/advocating-for-lgbt-youths-access-to-education-in-nicaragua/>.

³⁹⁷ Human Rights First, *Combating Bullying Against LGBT Youth in Jamaica* (July 31, 2015), <https://www.humanrightsfirst.org/blog/combating-bullying-against-lgbt-youth-jamaica>.

against LGBT people,³⁹⁸ and it does not appear to have halted the prevalence of bullying.³⁹⁹

Bullying, taunting, expulsion or suspension, and lack of educational resources regarding the LGBT community are all examples of barriers. These barriers hinder students from receiving the type of education that is required under international law. Lesbian students are unable to receive effective education when they are discriminated against and consistently expelled or suspended. Schools must foster environments that are supportive and non-discriminatory in order to comply with international law and human rights. Further, States and school districts should provide an array of viewpoints in their textbooks in order to provide an adequate and well-rounded education.

V. Access to Credit

A. International Standards

The International Covenant on Economic, Social and Cultural Rights reads in Part I, Art 1(1), "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁴⁰⁰ This language of pursuing economic development can be understood to apply to the process of obtaining credit or loans for the financial stability of ones-self and should be protected by anti-discrimination laws that include sexual orientation.

B. Findings

Money is often the gatekeeper for gaining access to basic necessities such as water, food, clothing, and shelter, which makes the reality of being unable to access credit to start a small business or simply assist in getting by paycheck to paycheck a vital need. Loans and lines of credit are often secured by collateral such as a property that the borrower gives a security interest to the lender. If you are an individual unable to own property or come

³⁹⁸ *Id.*

³⁹⁹ Carlene Davis, J-FLAG: Schools not taking bullying of LGBT students seriously (May 6, 2019), *The Gleaner*, <http://jamaica-gleaner.com/article/lead-stories/20190506/editors-forum-j-flag-schools-not-taking-bullying-lgbt-students>.

⁴⁰⁰ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

from poverty the opportunity to obtain these loans becomes scarce. In developing countries the economic woes for many are present and being a sexual minority magnifies this economic struggle. Because of this, there is minimal data on access to credit within LAC countries and even smaller amounts of information regarding LB women's ability to enjoy financial stability by obtaining loans. The data that is available is generally focused on the difference between men and women in regards to access to financial resources. As this information will encompass LB women it seemed appropriate to include in our findings.

In the Bahamas, the law provides for the same legal status and rights for women as for men; however, women reported it was more difficult for them to qualify for credit and to own a business.⁴⁰¹

In Antigua & Barbuda, a Financial Empowerment Centre (FEC) was established and is geared towards fostering financial independence for citizens of Antigua and Barbuda, particularly vulnerable groups such as women, on budgeting and other financial management.⁴⁰² Free professional financial advice is provided in four main areas: savings, budgeting, debt reduction and safe banking; and the government has implemented measures to increase access to credit and loans.⁴⁰³ However, there is no available data on the challenges or discrimination specific to lesbians in accessing credit.⁴⁰⁴

In Haiti, by law men and women have equal protections for economic participation, but women face barriers to accessing economic inputs and securing collateral for credit, as well as information on lending programs and resources.⁴⁰⁵

⁴⁰¹ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/the-bahamas/>.

⁴⁰² <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgcjd0xgERNaIXh22nhTUm1JikkW%2BF4uihkxB6KbpwUWZts99dYc6AfxLf5NYquIVrDc4IGNfLgWnvCDHXsxYrKEbt5Rb4otqoS6rrYByXNMKxzvBYMvAFr%2BSVhJOtdQ%3D%3D>.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/haiti/>.

In Mexico, women do not own businesses at the same rates of men.⁴⁰⁶ They own 29 percent of microenterprises, 19 percent of small firms, 6 percent of medium firms and 7 percent of large firms.⁴⁰⁷

In Venezuela, the government has taken steps to promote women's access to credit through its state-sponsored women's micro-credit bank: Venezuela's Women's Development Bank abbreviated Banmujer.⁴⁰⁸ Banmujer loans only to women and offers free financial services, loans and training to low-income women and regularly travels to rural communities to help poor women develop loan proposals.⁴⁰⁹

In Argentina, 51 percent of women have a bank account, compared to 46 percent of men.⁴¹⁰ This is attributed to the number of social programs available to women.⁴¹¹ According to the survey response, LB couples can gain access to bank accounts.⁴¹² Additionally, the previous government (Cristina Fernández, until December 2015) created several social programs and in them, groups formed by LGBT people and also groups with economic ventures, who received credit, training, and preferential purchases were contemplated.⁴¹³

The remaining LAC countries did not have applicable data available to report.

Closing Remarks

Discrimination within the Law

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<https://www.womensworldbanking.org/insights-and-impact/accelerating-economic-opportunity-in-mexico-by-applying-a-gender-lens/>.

⁴⁰⁷

<https://www.womensworldbanking.org/insights-and-impact/accelerating-economic-opportunity-in-mexico-by-applying-a-gender-lens/>.

⁴⁰⁸ <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/VE.pdf>.

⁴⁰⁹ <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/VE.pdf>.

⁴¹⁰ <https://www.thebubble.com/what-the-future-holds-for-financial-inclusion-in-argentina>.

⁴¹¹ *Id.*

⁴¹² See Appendix for Argentina survey response.

⁴¹³ *Id.*

Criminalization of same-sex intimacy is still at issue in nine LAC countries with laws that include jail time. These laws incite violence towards LB women that the government perpetuates by upholding these laws.

Anti-discrimination laws that encompass all areas (education, employment, health) are still missing in a majority of LAC countries. Countries with anti-discrimination laws that provide protections to LB women are often not adequately enforced. Numerous qualitative data through personal testimonial expose what it means to be a LB woman while attempting to receive adequate healthcare, safe education, and equal employment.

Gender Identity is arguably as strongly rejected as sexual orientation. The anger towards non-gender conforming woman magnifies if the woman is also a lesbian or bi-sexual. These societal roles have been condemned by numerous international bodies that uphold freedom of expression.

Violence

The violence experienced by LB women is nothing short of torture. Due to the overwhelming amounts of verbal, physical, and sexual assaults that overwhelm LB women in their daily lives, there is a direct link to mental and emotional anguish that leads to depression, paranoia, anxiety, and suicidal thoughts. The most egregious part of the violence is the victim's inability to obtain justice since numerous victims report they are met with indifference and sometimes further humiliation. If an LB woman lives in a country that criminalizes same-sex intimacy the victim of violence could be in danger of imprisonment if she attempts to seek justice against her attackers. Violence is intersectional, so when women experience violence based on their sexual orientation almost all of her rights are impacted, including their rights to life, health, and the right to be free from cruel, inhumane, or degrading treatment.

Familial Challenges

Even if a country legalizes same-sex intimacy it does not automatically grant recognition to same-sex couples. This creates barriers to the basic marital rights that heterosexuals enjoy

such as having a voice in medical decisions, being privy to medical information regarding your partner, healthcare benefits, and inheritance. If the couple has children, additional hurdles will be faced.

Access to IVF and equality in adoption is a pervasive problem throughout LAC countries. While LB women may be legally able to use IVF, it is often difficult to actually access to the process due to discrimination within the clinic or the individual doctors. Even when IVF is available, LB women still face challenges related to parental rights and who can be named on the child's birth certificate. These obstacles to IVF, adoption, surrogacy, or familial benefits is a violation of the right to family, as well as their sense of privacy and autonomy.

Economic, Social, and Cultural Rights

While some countries do protect against discrimination in regard to housing, there is still discrimination on the local level. There is very little information in this field, but LB women report being harassed by their neighbors and denied housing. This is discriminatory and often leads to a violation of their right to adequate living conditions.

Employment discrimination for women is prevalent in LAC countries, and discrimination of LB women is even worse. The impact goes beyond direct discrimination (i.e. refusal to hire) but can be subtle and found within a companies dress code policies, healthcare benefits, or medical leave for spouses. This discriminatory conduct hurts a state's economy by limiting the contributory potential of certain groups within the country. The amount of advancements that could be made for a country by empowering all citizens to become financially stable is substantial. LAC countries harm themselves economically by hindering LB women in employment.

Economic and informational barriers to healthcare are prevalent and a violation of the right to health. It is likely that external factors such as employment discrimination make it difficult for LB women to financially access the healthcare system, whether it be access to a healthcare plan, ability to pay for medications, or ability to find an affordable provider. Even if the woman is able to see a medical professional, they are often not knowledgeable about LB-specific issues, unwilling to listen to their concerns, or unwilling to perform certain gynecological check-ups under the belief that lesbians do not have sex with men and

therefore do not need certain exams. These barriers all a violation of a woman's right to health and adequate healthcare.

Education is often considered a foundational right, but violations seem to be everyday occurrences in LAC countries. LB women are punished, suspended, and expelled for scenarios that are as innocent as holding hands. Discrimination is engrained in the institutions, faculty, and curriculum. The lack of LGBT resources in textbooks and the lack of information and acceptance in school curriculums exacerbate the societal norm that women should only be with men.

The right to access credit for LB women is unreported. For many countries, the struggle for economic progress is felt by the entire society, even if disproportionately between groups. The empowerment of women has been a large focus on increasing access to credit and loans, which naturally will encompass the LB community. Generally, collateral is required to take out a loan, which many women fail to possess given the centuries of inequities between men and women in regards to property rights. This topic should receive closer attention in regards to sexual minority groups such as LB women.

Recommendations

Lesbian and Bi-sexual women across Latin America and the Caribbean face numerous unique challenges. A lack of visibility is of great concern because this affects their ability to access state resources such as adequate healthcare and equal protection under State laws. A lack of general social acceptance of lesbians affects the safety, happiness and sense of belonging within a community. Steps must be taken to foster non-discrimination, inclusion, and recognition of the unique issues that LB women face.

Visibility

Research needs to be conducted and published to increase visibility. International human rights organizations should work with local organizations to publish reports that adequately and thoroughly present the human rights violations that are present in Latin America and the Caribbean. Federal, state, and local governments should also fund studies with the goal of obtaining a complete picture of their regions. This research should be conducted on a local level but analyzed collectively to identify regional trends and common abuses. Systems should be designed and implemented to aggregate this data into quantitative statistics. Qualitative information should also be acquired and compiled to create case studies regarding particularly pressing human rights issues. Finally, studies should be implemented to delve into the intersectionality of LB women's issues and how it relates to race, gender, class, citizenship, and the like. All studies and statistics should be regularly updated.

Organizations and human rights groups should continue to work with international bodies to highlight the issues that LB women face rather than the LGBTQ community as a whole. When conducting research on the ground, separate notes regarding LB women should be drafted and accounted for rather than general observations of the entire LGBTQ community.

Discrimination within the Law

Since there is a pattern of discrimination across all countries, all levels of government should work with human rights and feminist organizations to address the context which

fuels structural discrimination and disparate treatment. Measures should be taken to discourage intolerance, as this will foster inclusivity and attack the root of many human rights violations. Further, systems should be created to monitor and punish violations of anti-discrimination and criminal laws that protect LB women to ensure safety and hold the community accountable.

Domestic law must be brought in line with the Inter-American and international standards that the States have undertaken to observe, which includes non-discrimination, prohibition of violence, and equal access to housing, education and healthcare. Any type of law that discriminates against people based on their sexual orientation, gender identity or expression should be overturned. Marriage should be legal across all states, and laws should be enacted that protect those relationships from discrimination and violence.

When creating new protection laws, lawmakers should use the previously discussed statistics and encourage LB women to participate in the discussions and the political landscape generally. Lawmakers should also make space for non-state actors such as civil society organizations to participate in the drafting and design of any programs that may be created as a result.

Violence

International and regional human rights bodies should work to outlaw conversion therapy, corrective rape, and any other practices that have a disparate impact on LB women or the LGBTQ community as a whole. Law enforcement must be held accountable to protect women from discrimination, violence, sex crimes and hate crimes rather than ignoring or participating. Regional bodies should implement policies and training to ensure that women are protected from violence and that perpetrators are being punished for violent acts of any kind.

Familial Challenges

Recognition of two consenting adults desiring to marry is a vital human right that should be met within every State. Beyond the right to marriage equality, there is a broader need for a societal shift in acceptance towards same-sex couples. A lesbian may not want to marry the person they are dating, but these individuals deserve to attend a gathering together

unharmed physically or emotionally by other citizens. Recognition of couples should be promoted to enjoy the dating and development of relationships publicly the way heterosexual couples can safely enjoy. It is the State's sole duty to protect and serve its citizens; at this time, many lesbian and bisexual citizens are being underserved and grossly under protected. Creating paths to marriage equality and anti-discrimination laws is a large step in the right direction. Countries should partner with NGOs, local companies, local programming, and other media outlets to bring visibility to LB women to aid in the effort to obey the laws that should be enacted to adhere to the international standards set forth.

Reproductive technologies should be available and easy to access for all women, despite their sexual orientation or gender identity. Human rights bodies should work with regional lawmakers to draft laws that affirmatively protect a lesbian couple's right to jointly adopt. Families with two mothers should be legally recognized regarding parental rights as well as beneficiary and social security rights. LB couples who are not married should be able to make decisions for each other in medical emergencies, and utilize their health insurance for their partner.

Economic, Social, and Cultural Rights

Local government agents and professionals should have mandatory inclusivity training and learn how to assist and support the LB community in the unique issues that they experience regarding the industries they work in. Medical professionals and educators should be especially well-versed in the LB community and be able to understand how to best help them thrive. Employers and landlords should be held legally accountable for their actions to ensure that discrimination is not taking place.

Healthcare professionals should be required to learn about unique health issues that LB women face in order to treat them properly. Hospitals and clinics should implement policies that enforce non-discriminatory environments which foster open conversation regarding safe sex, reproductive rights, and other medical issues. LB women should have equal access to health insurance and doctors of their choosing.

Regionally, organizations should work with schools to add LGBT-friendly textbooks into the classroom and national curriculum. Locally, schools should implement policies that prohibit educational punishment or suspension based on public displays of affection from LB

women. Teachers should be open and inclusive, and exemplify non-discriminatory attitudes during class.

Much more information is needed about specific issues and human rights violations that LB women face regarding housing, employment, and access to credit in order to provide particularized recommendations. Broadly, the steps above which aim to eradicate discrimination will drastically improve LB women's economic, employment, and housing opportunities. With these changes, Latin American and the Caribbean will be a safer and better place for all women.

Appendix

ARGENTINA

1) Criminalización

- **¿Existen en tu país leyes que penalizan a las relaciones entre personas del mismo sexo? (entendemos que la categoría de sexo es en sí misma problemática y que este enunciado podría entrar en cuestión en relaciones entre lesbianas o bisexuales cis y trans, pero es la forma en que habitualmente están redactadas estas leyes)**
- **¿Se aplican efectivamente contra las lesbianas o mujeres bisexuales?**
- **¿Existe algún otro tipo de normativa (nacional, estadual/provincial, municipal o emanada de la policía) referidas a demostraciones públicas de afecto, decencia, decoro, escándalo en la vía pública o alguna otra figura similar que se aplique contra las lesbianas y mujeres bisexuales?**

En Argentina no hay y no hubo, al menos desde inicios del siglo XX en adelante, leyes que penalizaran las relaciones entre personas del mismo sexo. Sí han existido normativas de menor jerarquía llamadas códigos de faltas o códigos contravencionales, promulgadas por el poder legislativo de las provincias (o estados) y también otra normativa llamada edictos policiales. Los edictos policiales han sido una grave anomalía legal: eran normas promulgadas por la policía, sobre todo la federal, que la propia policía juzgaba y hacía cumplir las penas previstas en comisarías. Todos estos códigos y edictos contenían lo que se llama figuras abiertas por lo difuso de su redacción: escándalo en la vía pública, merodeo, vagancia, mendicidad, desacato a la autoridad, oferta y demanda de sexo en la vía pública, etc. Fueron derogados en la Ciudad de Buenos Aires en 1997, cuando dejó de ser territorio federal y pasó a ser ciudad autónoma, y en las provincias en años sucesivos, aunque en algunas ciudades (La Plata, capital de la provincia de Buenos Aires, centro administrativo, a 60 km de la Ciudad Autónoma de Buenos Aires) y provincias (como Córdoba) se reinstalaron en años recientes. Estas normativas se usaron históricamente para perseguir las demostraciones de afecto o la mera presencia en el espacio público de las personas LGBT, y aunque las lesbianas y mujeres bisexuales fuimos las menos perseguidas, sí se aplicaron contra nosotras y siempre se usaron como herramienta de amedrentamiento.

2) Reconocimiento de las relaciones de pareja

- **¿Existe en tu país alguna forma de reconocimiento legal de las parejas de lesbianas y/o mujeres bisexuales: ¿matrimonio, unión civil o alguna otra?**
- **En caso de existir. ¿Son de alcance nacional o rigen solo en algunos estados?**
- **¿Puede una lesbiana o bisexual tomar decisiones médicas sobre su pareja si ésta se encuentra incapacitada para hacerlo por sí misma?**

-
- **¿Puede una lesbiana o bisexual darle cobertura de la seguridad social/seguro médico a su pareja?**
 - **En caso de que una integrante de una pareja fallezca, ¿la sobreviviente tiene derecho a cobrar pensión de viudez, heredar, decidir sobre la disposición final del cuerpo de la otra?**

Desde la entrada en vigencia del nuevo Código Civil y Comercial de la Nación en 2015, la posibilidad de matrimonio se extendió a todas las personas LGTB, con todos sus privilegios, incluidos todos los derechos laborales como licencias para cuidar a la otra, extensión del seguro de salud, pensiones de viudez. También incluye la herencia y la toma de decisiones médicas o funerarias, además de numerosos beneficios patrimoniales, como la consideración conjunta de los bienes gananciales y también el derecho a solicitar alimentos a la otra en caso de divorcio.

El Código contempla también el reconocimiento de las parejas de hecho, ya sea que la unión de hecho esté registrada como si no lo está. Tiene casi los mismos beneficios y obligaciones que el matrimonio, con la excepción de ciertas cuestiones patrimoniales y algunas pocas diferencias en el caso de filiación de hijxs en común. También en estas uniones de hecho se reconocen derechos laborales que benefician a la pareja, las pensiones de viudez (reconocidas en Argentina a parejas de hecho heterosexuales hace casi 30 años y a parejas de hecho gays hace casi 20) la toma de decisiones y la posibilidad de reclamar alimentos luego de la separación.

- **Las lesbianas o bisexuales mayores que están en pareja, ¿pueden seguir viviendo juntas cuando son alojadas en geriátricos u otras instituciones de cuidados a personas mayores?**

En general los derechos sexuales de las personas adultas mayores no son respetados, y mucho menos en geriátrico u otras instituciones de residencia de ancianxs. En los dos o tres últimos años se están organizando grupos de lesbianas adultas mayores planeando residencias conjuntas y grupos de gays adultos mayores que están intentando hacer valer lo dispuesto en la Convención Americana sobre los Derechos de las Personas Adultas Mayores.

- **En casos de violencia dentro de las parejas de lesbianas o bisexuales, ¿puede la que fue violentada recurrir a los refugios u otros servicios para mujeres maltratadas en vínculos íntimos?**

En general no hay servicios ni estatales ni de las organizaciones de la sociedad civil capaces o con voluntad de dar acogida, refugio, orientación ni asesoramiento legal a lesbianas/bisexuales víctimas de violencia dentro de sus relaciones de pareja. En algunos lugares, como la provincia de Córdoba, la ley contra la violencia contra las mujeres está redactada de tal forma que abarca a las lesbianas/bisexuales, pero de todas formas los refugios no trabajan con ellas.

3) Familia

- **¿Tienen las lesbianas o bisexuales la posibilidad de acceder a tecnologías reproductivas? Si no está prohibido, ¿hay alguna ley que lo regule o cada médicx sigue su propio criterio? ¿Hay alguna cobertura de la seguridad social/seguro de salud para hacerlo o el costo debe ser cubierto de forma individual?**

En 2013 se sancionó a nivel nacional la Ley N° 26.862 de Acceso integral a los procedimientos y técnicas médico asistenciales de reproducción médicamente asistida, que garantiza el acceso a estas técnicas para todas las personas mayores de edad independientemente de su estado civil, su orientación sexual o su identidad de género y que no requiere un diagnóstico de infertilidad y por eso la consideramos despatologizante (contiene provisiones para personas menores de 18 años cuando su fertilidad pueda verse comprometida). Es una ley de accesos y por lo tanto hay una cantidad de aspectos finos que no están bien contemplados o prescriptos.

Esta ley obliga a dar prestaciones de fertilización asistida al sistema público de salud, a los seguros laborales de salud y a las empresas privadas de medicina.

Si bien la ley tiene aplicación nacional y está en vigencia, no hay un ente que monitoree su cumplimiento y se constatan permanentemente la imposición por parte de los prestadores de condiciones que no están en la ley y que restringen el acceso o ponen dilaciones: por ejemplo, niegan los tratamientos aduciendo que las peticionantes no son infértiles (justo al contrario de lo previsto por la ley, que no exige diagnóstico de infertilidad), dan sólo tres intentos de baja complejidad y luego obligan a pasar a alta complejidad, cuando se supone que hay que intentar uno o dos años en baja complejidad para tener motivos para pensar que conviene la alta (en última instancia, alguien podría no querer esperar tanto pero lo que se cuestiona es que los prestadores obliguen a ese cambio); se ponen topes de edad máximos para el acceso a tratamientos que no están en la ley, etc. Por otro lado, también hay que mencionar que hay limitaciones prácticas de acceso a estas técnicas: están muy disponibles en ciudades grandes, pero poco o nada disponibles en ciudades chicas o pueblos. Muchas veces, las lesbianas/bisexuales viajan a las ciudades grandes para acceder a la fertilización, lo cual a su vez puede acarrear falta de cobertura de los seguros de salud, que suelen estar limitados por provincia.

- **En el caso de que dos lesbianas o bisexuales tengan hijxs juntas, ¿pueden anotarlo en el registro civil como hijx de las dos?, ¿la madre no gestante debe adoptar a su hijx?, ¿no hay ninguna posibilidad de reconocimiento legal para las dos madres? Por favor, describir de la forma más completa posible la situación en tu país.**
- **En caso de que dos madres lesbianas o bisexuales se separen, ¿hay algún tipo de garantía legal o costumbre judicial o de servicios estatales para garantizar que su hijx siga teniendo contacto con las dos? ¿hay algún mecanismo para que alguna de las madres pague alimentos a la otra si ésta pasa más tiempo a cargo del hijx?**

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- **En el caso de que la madre gestante fallezca o quede incapacitada, ¿la/el hijx queda a cargo de su otra madre o pierde contacto con ella y es puesto bajo custodia de la familia de origen de la madre gestante o del Estado?**

Desde la entrada en vigencia del nuevo Código Civil y Comercial de la Nación, se reconoce la voluntad procreacional como fuente de filiación en el caso de uso de tecnologías reproductivas. Esto significa que, tanto si las dos madres están casadas como si no lo están, si recurren al sistema médico para la fertilización y habiendo firmado los consentimientos informados previos a los procedimientos de fertilización, consta esa voluntad procreacional y ambas pueden anotar a su hijx como madres en el Registro Nacional de las Personas (registro civil), en un trámite administrativo ordinario gratuito y expedito, idéntico a los casos de niñxs nacidxs de parejas heterosexuales (en Argentina, desde 1985 no hay diferencias legales ni sociales entre niñxs nacidxs dentro del matrimonio y extramatrimoniales). Lxs hijxs llevarán los apellidos de ambas madres, en el orden que quieran (eso dispone otra ley para todxs lxs niñxs). Los efectos son plenos: todos los derechos y todas las obligaciones para ambas madres en relación a sus hijxs, de cuidado, de soporte económico, de tenencia compartida, de extensión de beneficios surgidos de derecho laborales, alimentos, guarda, etc.

Si las madres están casadas y recurren a una inseminación casera, ya sea con donante anónimo (se firman consentimientos al comprar la muestra de esperma al banco) o conocido, lxs hijxs se presuponen del matrimonio y se anotan con dos madres, en el mismo trámite simple ordinario en el registro civil, con efectos plenos de derechos y obligaciones para la comaternidad.

El único caso que quedó afuera del reconocimiento automático es el de dos madres no casadas que recurren a inseminación casera con donante conocido. En esos casos no hay consentimiento informado y los acuerdos notariales firmados previamente por lxs involucradxs no se consideran de validez automática. Sin embargo, hubo varios de estos casos que fueron litigados y se dio el reconocimiento pleno e igual a las dos madres y el donante no fue registrado como padre.

https://tn.com.ar/sociedad/fueron-mamas-con-una-inseminacion-casera-y-les-prohiben-anotar-su-hijo-nombre-de-las-dos_946639

- **Por favor, describe si los servicios educativos y de salud reconocen a las dos lesbianas o bisexuales como madres de su hijx o si sólo dan validez al vínculo de la gestante.**

Más allá del pleno reconocimiento legal de la comaternidad, todavía el reconocimiento social es dispar y en muchas ocasiones las instituciones educativas y los servicios de salud tienen una posición inicial de no reconocer el vínculo de la madre no gestante. Son inercias institucionales, de contenidos, y van siendo confrontadas por las familias lésbicas, en la mayoría de los casos sin que ya se llegue a la instancia judicial.

- **Si una lesbiana o bisexual tuvo hijxs en una relación heterosexual anterior, ¿existe el riesgo de que pierda la tenencia de sus hijxs si se revela su**

orientación sexual? ¿existe alguna diferencia si estaba casada o no con el padre de lxs hijxs? ¿Existen casos donde los hombres chantajean con esa posibilidad a las lesbianas o bisexuales para que acepten arreglos de divorcio económicamente desventajosos para ellas?

Estas situaciones ya no se dan en Argentina. Los tribunales no dan ningún peso a la orientación sexual de la madre. (Existen numerosos casos de madres que han perdido la tenencia de sus hijxs en años recientes pero no tiene nada que ver con su orientación sexual: se trata de madres que denunciaron a los padres por violencia o pedofilia y terminaron siendo ellas las judicializadas y castigadas.)

- ¿Hay algún caso de reconocimiento de alguna familia multiparental, a través de la ley o de fallo judicial?

Si bien el nuevo Código Civil y Comercial de 2015 prohíbe taxativamente la posibilidad de que una persona tenga más de dos vínculos filiatorios, hubo un período ventana de seis meses entre la aprobación del Código en el Congreso y su entrada en vigencia, que fue aprovechado por organizaciones de activismo legal para presentar dos casos judiciales de reconocimiento de familias multiparentales. En ambos casos, se trataba de una pareja de lesbianas cis y un gay cis, que habían decidido tener unx hijx entre lxs tres. Uno de los casos fue en la Ciudad Autónoma de Buenos Aires y otro en la provincia de Buenos Aires (dos distritos diferentes) y ambos se resolvieron favorablemente a las familias, de manera que las dos madres y el padre figuran en el certificado de nacimiento de su hijx y lxs tres tienen plenos e iguales derechos y obligaciones legales.

- ¿Es posible en tu país que una pareja de lesbianas o bisexuales adopte hijxs de forma conjunta?

El nuevo Código Civil y Comercial de la Nación, de 2015, extendió las posibilidades de adopción conjunta a todas las parejas, estén o no casadas (antes sólo podían adoptar conjuntamente las parejas casadas y hasta 2010 sólo se podían casar lxs heterosexuales) e independientemente de su orientación sexual y/o identidad de género.

Por supuesto, hay inercias y prejuicios institucionales que siguen favoreciendo a las parejas cis heterosexuales en los procesos de adopción, aunque ha habido numerosos casos de adopciones concedidas a personas y parejas LGTB. Las que siempre han tenido menos carga de prejuicio en contra para adoptar han sido las parejas de lesbianas cis, a partir del mito del instinto materno en las mujeres, del mito de la capacidad innata para maternar sólo por ser mujer y de que es necesario para realizarse en la vida siendo mujer tener hijxs.

4) Empleo

- Si se revela la orientación sexual de una lesbiana en su lugar de trabajo, ¿puede perder su empleo por esa causa? ¿es legal o es algo que se hace bajo pretextos?

No es legal despedir a alguien de su empleo debido a su orientación sexual, aunque esto ha sucedido mucho en el país y sigue pasando, alegando cualquier pretexto para el despido. Habitualmente, los empleos con más riesgo de despido arbitrario y

discriminatorio para las personas lgbt han sido los que tienen que ver con niñxs, como la docencia, debido a los prejuicios sobre pedofilia o reclutamiento. En la escuela pública, esto ya es poco frecuente, sobre todo en las ciudades grandes, pero en las escuelas confesionales sigue sucediendo. Cabe aclarar que todas las escuelas confesionales reciben grandes aportes de dinero público, porque el Estado es quien paga los sueldos docentes. Ese fue el caso de Carolina Perona, quien en 2018 había pasado las entrevistas para cubrir un cargo en una escuela católica. Sin embargo, cuando llenó los formularios para la incorporación formal a la institución, quedó revelado que estaba por casarse con otra mujer. La llamaron y le dijeron que habían cambiado de idea y no la contratarían, usando como excusa que iba a tomarse un día de licencia por el viaje de casamiento en un momento en que no le correspondía por ser nueva en el puesto.

<http://agenciapresentes.org/2018/09/11/caba-docente-denuncia-que-perdio-el-trabajo-en-un-colegio-por-ser-lesbiana/>

Algo semejante le sucedió en septiembre de 2019 a Paola Scarfó, psicóloga que estaba a punto de empezar a trabajar en un centro de atención para personas con discapacidad y con trastornos mentales en un pueblo cerca de Rosario (una de las tres ciudades más grandes del país). Ya había sido confirmada en el nuevo empleo, por lo que renunció al que tenía antes. Al llenar los formularios de incorporación, indicó que estaba por casarse con una mujer. Al día siguiente le anunciaron cambios de último momento en la estructura de la institución, por lo que su contratación quedaba sin efecto.

<https://www.tiempoar.com.ar/nota/la-echaron-del-trabajo-cuando-se-enteraron-que-era-lesbiana-y-se-iba-a-casar>

Ambas iniciaron juicios laborales y denunciaron en ministerios de trabajo y agencias contra la discriminación.

- **¿En tu país hay empresas nacionales o internacionales que ofrezcan abiertamente programas de empleo para personas gltb? Por ejemplo, Google suele anunciar que es un empleador que no discrimina.**

Desde 2018, se instaló en el país una rama local de Pride Connections, una red de empresas que ofrece capacitaciones para fomentar el empleo de personas de la comunidad LGBT. En Argentina, participan las transnacionales Accenture, Bayer, Dow Chemical, ExxonMobil, GE, Gire (su empresa local Rapipago), HSBC, IBM, J.P. Morgan, L'Oréal, ManpowerGroup, SAP, Sodexo y TakoLab.

<https://www.ambito.com/empresas-impulsan-la-contratacion-lgbt-n4034695>

Además, hay redes informales que potencian las oportunidades de trabajo para lesbianas y bisexuales que trabajan por cuenta propia, tanto ofreciendo servicios como productos. Así, hay por ejemplo varios grupos de Facebook donde se publicita a plomeras, gasistas, pintoras de obra lesbianas/bisexuales/trans, así como diversos tipos de servicios de cuidado personal o de enseñanza, y productos de todo tipo fabricados en emprendimientos de lesbianas y bisexuales.

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- **¿Es habitual que en los empleos haya códigos de vestimenta que reproducen roles de género heterocentros?**

Sí, es lo más frecuente, sobre todo en grandes empresas o en cadenas comerciales. En algunas, todxs lxs empleadxs visten pantalón, aunque suele obligarse a las mujeres a usar tacos y maquillaje junto con los pantalones de traje.

- **¿Es posible pedir licencia para cuidar de la pareja lesbiana o bisexual en caso de enfermedad?**
- **Si el empleo ofrece cobertura de seguro de salud, ¿es posible para una lesbiana o bisexual extenderlo a su pareja?**

Estos y todos los demás derechos laborales reconocidos a quienes tienen un empleo formal están reconocidos desde la entrada en vigencia del Código Civil y Comercial de la Nación en 2015 para todas las parejas de lesbianas/bisexuales casadas, en unión de hecho registrada y no registrada.

Para más información sobre la situación de lesbianas y bisexuales en relación al empleo en Argentina, consultar Pride – Orgullo en el trabajo, producido por la OIT y la Federación Argentina LGBT, incluido en el drive de documentos de apoyo a este informe.

5) Vivienda

- **¿Son frecuentes los casos en que se les niega a las lesbianas o bisexuales, solas o en pareja, alquilar una vivienda? ¿Es algo permitido legalmente o que se hace a pesar de no tener respaldo legal?**
- **¿Se le piden condiciones especiales a las lesbianas o bisexuales para alquilar? Por ejemplo, pagar más caro, presentar más garantías de respaldo.**
- **¿Son frecuentes los casos en que vecinos hostigan a las lesbianas o bisexuales en sus casas?**
- **¿Ha habido casos en que tu organización o algunas integrantes de la organización hayan tenido que albergar a lesbianas o mujeres bisexuales en sus propias casas?**

No es legal discriminar en el acceso a la vivienda, pero tampoco hay ningún tipo de mecanismo que lo impida o donde denunciar. Sí suceden casos donde a lesbianas/bisexuales solas o en pareja se les niega alquilar o se les piden precios más altos que a otras personas o más condiciones (respaldos de más garantías propietarias, más recibos de sueldos, etc.). Estas situaciones son más frecuentes cuantas más condiciones estigmatizadas encarna la misma persona/pareja: si son de clases populares o medias-bajas, si son de piel oscura, si tienen niñxs, mascotas (aunque la ley no lo permite, muchxs dueñxs se niegan a alquilar a personas con niñxs o con mascotas, independientemente de la orientación sexual o identidad de género), si su trabajo es informal, según en qué lugar del país vivan, etc.

No hay registros formales de estas situaciones, pero se conocen por el boca a boca.

También ha habido casos de hostigamientos, desde leves como insultos u otras formas de acoso verbal, molestias entre vecinxs, hasta el más grave de todxs que fue el acoso, emboscamiento y violación a Higua (Eva Analía) de Jesús en su barrio por parte de una pandilla que la tenía marcada. Higua vive en un barrio del conurbano bonaerense (provincia de Buenos Aires, en los suburbios de la capital, Ciudad Autónoma de Buenos Aires), es una lesbiana masculina conocida por jugar al fútbol, y en numerosas ocasiones apedrearon su casa e incluso intentaron quemar la vivienda. La violencia escaló y el 16 de octubre de 2016 la pandilla intentó violarla en grupo, al grito de “Te voy a hacer sentir mujer, forra, lesbiana”. Ella se defendió, produciendo la muerte de uno de sus atacantes, que a su vez pensaron que ella estaba muerta y huyeron abandonándola a ella y al agresor. Fue encarcelada primero en comisaría, sin atención médica, y luego trasladada a la cárcel en espera de juicio por homicidio, pero tras una intensa movilización del activismo lésbico y algunxs aliadxs, se le levantó la prisión preventiva a la espera de un juicio donde ahora se está pidiendo su absolución alegando legítima defensa. Higua de Jesús es una persona de bajos recursos económicos y escaso acceso a la información, no hubiera podido afrontar la falsa acusación ni obtener su excarcelación de no ser por la movilización del activismo lésbico, que además le consiguió abogada. El juicio oral iba a ser en abril de 2019, pero se aplazó.

<https://www.pagina12.com.ar/177493-libertad-para-higua>

<http://agenciapresentes.org/2018/07/20/el-juicio-a-higua-de-jesus-acusada-por-defenderse-sera-en-abril-de-2019/>

6) Acceso al crédito

- **¿Hay algún programa de acceso al crédito para mujeres u otras poblaciones vulnerables al que puedan apelar las lesbianas o bisexuales para sus propios emprendimientos económicos?**
- **Si piden crédito a un banco y son una pareja, ¿las reconocen como tal y computan conjuntamente los ingresos de ambas o las tratan como si no tuvieran relación entre sí?**

Desde la entrada en vigencia del nuevo Código Civil y Comercial de la Nación, las parejas de lesbianas/mujeres bisexuales pueden casarse o constituir uniones de hecho, que a su vez pueden estar registradas o no. Prácticamente todos los bancos reconocen no sólo a las parejas casadas sino también a las que están en uniones de hecho, incluso si no están registradas, en tanto puedan llevar un certificado de convivencia (se gestiona en sede policial, donde se hacen los certificados de domicilio) y dos testigos.

Con el gobierno anterior (Cristina Fernández, hasta diciembre de 2015) hubo varios programas sociales y en ellxs se contemplaba a parejas formadas por personas LGTB y también a colectivos con emprendimientos económicos, que recibían crédito, capacitación, compras preferenciales, etc.

7) Violencia

- **¿Las lesbianas o bisexuales están expuestas a ataques físicos en la vía pública? ¿Es frecuente? ¿Los realizan particulares indistintos o miembros de algún grupo en especial, como neonazis?**
- **¿Son frecuentes los ataques verbales o insultos lesbofóbicos o bifóbicos?**

Son muy frecuentes los insultos lesbofóbicos (no tanto los bifóbicos porque le imaginario popular no las registra) y los ataques verbales contra parejas de lesbianas/bisexuales, sobre todo si están besándose o de la mano en público, o contra las más masculinas. Esta situación se repite en todo el país.

Los ataques físicos son menos frecuentes pero durante los últimos 4 años, durante el gobierno de Macri, hubo una fuerte instalación de un clima social y un discurso oficial de intolerancia y discriminación con marcados contenidos homofóbicos, lesbofóbicos, transfóbicos y bifóbicos, así como xenofóbicos, racistas y clasistas. Esto derivó en un aumento alarmante de los ataques físicos contra personas LGBT, tanto a manos de particulares como de policías.

<http://agenciapresentes.org/2019/03/19/en-argentina-se-reportaron-147-crimenes-de-odio-contra-lgbt-en-2018/>

El incidente más notable fue la judicialización de Marian Gómez, una lesbiana masculina que se estaba besando con su pareja en una gran terminal de metro muy concurrida, en octubre de 2017. El policía que quiso arrestarla alega que fue porque estaba fumando en un lugar prohibido; sin embargo, muchas otras personas estaban fumando y nadie les dijo nada. Ella resistió, se originó un incidente porque el policía quiso detenerla, intervino una mujer policía, Marian se defendió y terminó con una causa judicial acusada de desacato a la autoridad y lesiones graves por haber arrancado un mechón de pelo a la mujer policía, una carátula incongruente con el daño y que muestra un claro sesgo lesbofóbico. Hubo una enorme campaña del movimientolésbico denunciando esta situación y exigiendo la anulación de la causa. Sin embargo, fue a juicio oral en junio de 2019 y recibió una condena de un año de prisión en suspenso (lo cual implica que por cualquier falta menor la condena se puede hacer efectiva y que le quedan antecedentes penales durante diez años).

<https://www.nodal.am/2019/06/argentina-1-ano-de-prision-en-suspenso-para-mariana-gomez-la-mujer-que-se-beso-con-su-esposa-en-publico/>

Además, en septiembre de 2018 fue atacado el local de la agrupaciónlésbica y feminista Arpías, en la provincia de Salta. El frente de su local fue atacado con pintadas ofensivas realizadas con aerosol. Salta es una provincia del noroeste argentino, muy conservadora y machista, una de las únicas dos donde se enseña religión (católica y evangélica) en las escuelas públicas, en contra de lo establecido en la Constitución nacional.

<https://www.dnisalta.com/noticias/seccion-salta-1/atentaron-contra-el-local-de-una-agrupacion-feminista-7539>

- **¿Hay casos de violaciones correctivas? Si los hay, por favor describe cómo han sido tratados por la prensa y por el sistema judicial.**

Más allá de que es conflictivo el término “violación correctiva” aplicado a esto (en un punto, toda violación tiene vocación de “corregir” o castigar la sexualidad de la víctima o su

identidad de género), sí se han dado estos casos. Ver la respuesta a la pregunta sobre Vivienda, donde se relata la situación padecida por Higua de Jesús.

- **¿Las lesbianas o bisexuales están expuestas a violencia dentro de sus familias de origen? ¿A qué clases de violencia?**

Sí, aunque ha disminuido en las últimas décadas y aunque no hay estadísticas oficiales ni recopiladas por organizaciones sociales. La violencia es mayor en los casos de adolescentes y por lo general es violencia verbal, psicológica y a veces física (golpes). Hay control de amistades y restricción de salidas y de horarios. En ocasiones, las adolescentes son enviadas a psicoterapia. En ocasiones, con menos frecuencia, hay violencia sexual en respuesta a la revelación o descubrimiento de la orientación sexual.

El caso más resonante en años recientes fue el asesinato en 2016 de Marcela Crez, una lesbiana de 54 años, a manos de su propia madre, una anciana de 75 años que la apuñaló poco tiempo después de que Marcela iniciara una convivencia con otra mujer. Aunque se habló mucho de crímenes de odio, la situación guarda más semejanza con los llamados "crímenes de honor".

<https://www.lanacion.com.ar/seguridad/una-mujer-fue-detenido-tras-asesinar-a-su-hija-por-ser-lesbiana-nid1946464>

- **¿Están expuestas a acoso laboral o chantaje?**

Sí, sobre todo en épocas de dificultades económicas, cuando las condiciones laborales se precarizan y la gente queda más vulnerable a ser abusada en sus trabajos debido a la dificultad de conseguir otros. No hay estadísticas sobre esto.

- **¿Hay clínicas para "curar" el lesbianismo o la bisexualidad?**

No hay este tipo de clínicas en el país.

- **En tu país, ¿es legalmente posible que la familia de origen interne a una lesbiana o bisexual sin su consentimiento en una institución psiquiátrica debido a su orientación sexual?**

Desde el año 2010 existe la Ley nacional N°26.657 de Derecho a la Protección de la Salud Mental que prohíbe las internaciones forzadas de pacientes en instituciones psiquiátricas, siempre deben tener su consentimiento o el de su representante legal. Además, prohíbe expresamente la realización de diagnósticos de salud mental sobre la base exclusiva de la elección o identidad sexual.

Sin embargo, no se puede afirmar que este tipo de internaciones no se realizan nunca, sobre todo en las clases altas o en lugares apartados de los grandes centros urbanos.

8) Políticas y prácticas antidiscriminatorias

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- **¿Hay en tu país algún tipo de prohibición de discriminación, sea una ley o una normativa de menor rango? ¿Menciona específicamente a la orientación sexual y a la identidad o expresión de género?**

Hay una ley nacional sobre actos discriminatorios del año 1988, que es muy limitada y no menciona orientación sexual ni identidad o expresión de género. Sí hay numerosas normativas de menor rango que incluyen explícitamente estas características como motivos prohibidos de discriminación. El ejemplo más destacado quizás sea la Constitución de la Ciudad Autónoma de Buenos Aires, sancionada en 1996, que fue el primer texto legal del país en mencionar como categorías protegidas a la orientación sexual y la identidad de género. Luego hay ordenanzas municipales, normativa interna de universidades, centros de salud, etc. y otras leyes nacionales de acceso a derechos y a servicios donde se prohíbe restringir o discriminar por orientación sexual o identidad de género.

- **¿Hay algún ente público donde se puedan hacer denuncias frente a actos discriminatorios? ¿Es eficiente o cumple sólo un rol nominal?**

El principal ente donde hacer denuncias por discriminación es el Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI). Su rol es recibir denuncias, elaborar informes y estadísticas, ejercer mediación cuando ambas partes acuerdan aceptarla y producir campañas y materiales educativos. No tiene un papel de intervención directa para ordenar el cese o reparación de situaciones de discriminación. Hay otras instancias semejantes a nivel de las provincias y de la Ciudad Autónoma de Buenos Aires y también hay oficinas especializadas dentro de la Defensoría del Pueblo (Ombudsperson) a nivel provincial o municipal. Las Defensorías del Pueblo sí realizan a veces intervenciones más directas, además de, en ocasiones, acompañar judicialmente a las víctimas.

- **¿Tu país realiza algún tipo de censo? ¿Registra de alguna forma a las lesbianas y bisexuales o a las parejas de lesbianas y/o bisexuales o a las familias con madres lesbianas o bisexuales?**

Argentina realiza censos nacionales cada diez años. Cuando fue el censo de 2001, el movimiento LGBT todavía era pequeño y sin tanto respaldo social; nos limitamos a hacer un poco de campaña informal dentro de la comunidad LGTB en la ciudad de Buenos Aires para alentar a las parejas gays y lésbicas a que se reportaran como tales en el censo. Para el censo de 2011, el organismo a cargo (Instituto Nacional de Estadísticas y Censos) convocó a una reunión entre sus autoridades y varias organizaciones del movimiento LGBT. Ese año se estaba incorporando la variable de afrodescendencia y solicitamos algún tipo de registro de nuestra comunidad. En esa reunión se nos informó que en el censo 2001, toda vez que aparecían registros en un hogar de una pareja formada por dos mujeres o por dos hombres, el sistema lo consideraba un error y automáticamente cambiaba uno de los nombres, eliminando esas parejas del mismo sexo. Para el censo 2011 se registraron las parejas de dos mujeres y de dos hombres y también las familias LGTB con hijxs a cargo (hubo una gran discusión entre las personas trans sobre cómo querían ser registradas). El año que viene (2020) habrá un nuevo censo y se volverán a

registrar parejas y familias LGBT, pero evitando casilleros donde consignar categorías de orientación sexual.

- **Las lesbianas o bisexuales privadas de libertad, ¿tienen derecho a recibir visitas íntimas?**

Tienen ese derecho, aunque el cumplimiento es dispar en las distintas unidades de los servicios penitenciarios federal y provinciales (lo cual no es sorprendente porque los servicios penitenciarios del país están acusados de numerosas y gravísimas violaciones a los derechos humanos). En la provincia de Buenos Aires estas visitas íntimas sí se cumplen para lesbianas y bisexuales.

- **¿Hay lugares públicos de reunión social o política de las lesbianas y bisexuales? Bares, discos, sedes de organizaciones, librerías, etc.**

Desde los '90 ha habido distintos tipos de espacios de reunión de y para lesbianas y bisexuales y para un público LGTB general. Esto incluye sedes de organizaciones, centros culturales, bibliotecas y archivos, bares y discos. El tiempo de duración de cada emprendimiento depende de la situación económica en las épocas en que han funcionado, de su localización (duran más en el centro de las ciudades grandes) y a veces también de si acceden a algún tipo de subsidio estatal o privado. También ha habido gran cantidad de publicaciones: revistas, fanzines, boletines y desde hace unos diez años también libros.

- **¿Hay figuras públicas de tu país que se presenten abiertamente como lesbianas o bisexuales? ¿Cuál es la reacción del público?**

Sí, muchas, desde los años '90 y cada vez más desde 2010. La reacción del público en general es positiva, sobre todo desde la gente más joven. Hay cantantes, músicas, actrices y deportistas abiertamente lesbianas o bisexuales que tienen una gran cantidad de seguidoras precisamente por ese motivo.

- **¿Hay algún caso en que tu país haya concedido asilo político o estatus de refugiadx a alguna persona con motivo de su orientación sexual o identidad de género? ¿Hay alguna declaración o medida oficial a favor o en contra de este reconocimiento?**

Argentina otorga status de refugiadx a personas perseguidas en sus países de origen por su orientación sexual y/o su identidad de género. Desde 2014, más de 20 personas fueron beneficiadas con este reconocimiento.

- **¿Cuál es la situación de las lesbianas o bisexuales migrantes en tu país? ¿Se les reconoce el derecho de reunión familiar? ¿Enfrentan mayor discriminación?**

Las lesbianas y bisexuales inmigrantes pueden acogerse a beneficios como el casamiento o las uniones de hecho. En general no enfrentan mayor discriminación por su orientación sexual, sino por el hecho en sí de ser migrantes, debido a los altos niveles de xenofobia racista, que se ve incrementada según el color de piel y la clase social de las migrantes. Por

ejemplo, venezolanas de clase media mestizas o blancas (una migración reciente) son mejor acogidas que bolivianas indígenas o que africanas (también migración reciente).

- **¿Es común que las lesbianas o bisexuales emigren de tu país por sentirse hostigadas por su orientación sexual? ¿Hacia dónde van, preferencialmente?**
- **¿Hay fenómenos de migración interna desde pueblos y ciudades chicas hacia otras más grandes motivados por climas sociales opresivos hacia las lesbianas o bisexuales?**

No es frecuente que las lesbianas y bisexuales se vayan del país debido a su orientación sexual, pero sí es muy frecuente la migración interna de las personas LGBT desde los lugares más chicos y conservadores del interior hacia las ciudades más grandes. No hay registros oficiales de esto, pero en las comunidades LGBT es un fenómeno muy conocido.

9) Salud

- **¿Existen barreras específicas en el acceso a la salud para las lesbianas o bisexuales?**
- **¿Conoces prácticas discriminatorias en la atención de salud que afecte particularmente a las lesbianas o bisexuales?**
- **¿Existen en tu país servicios de salud especializados/preparados para atender a las lesbianas o bisexuales? Por ejemplo, consultorios de ginecología con profesionales entrenadxs para no tener un enfoque heterosexista.**

En relación a la salud en general, una barrera de acceso es la económica: muchísimas lesbianas y bisexuales están precarizadas, con trabajos informales sin cobertura de salud y los hospitales públicos están en crisis luego de cuatro años de gobierno neoliberal. El tema clave de discriminación y mala atención es la salud ginecológica. Si bien desde fines de los '90 distintos agrupamientos de lesbianas y bisexuales vienen difundiendo información entre pares y haciendo campañas específicamente dedicadas a ginecólogxs, todavía se encuentran con un fuerte heterosexismo a la hora de la consulta ginecológica, donde siempre se parte de una presunción de heterosexualidad y la mayoría de lxs profesionales no tiene información sobre sexualidad de lesbianas y bisexuales como para orientar en prácticas de sexo más seguro ni tampoco tienen siempre información precisa sobre la posibilidad de transmisión de infecciones. Desde hace unos años se ha puesto mucho énfasis en los llamados consultorios inclusivos, que sobre todo se enfocan a personas trans en lo relativo a salud transicional y a testeo y atención de vih para personas trans y gays cis, no ha habido políticas de formación para la atención de lesbianas y mujeres bisexuales.

No hay tampoco, ni en centros públicos ni en privados, folletería ni cartelería dirigida a lesbianas y bisexuales para hacerles saber que es un espacio seguro, ni con información médica ni con orientación en cuanto a derechos.

- **¿Hay temas/prácticas relacionadas con la salud de las mujeres (particularmente sexual y reproductiva) donde sería importante considerar la orientación sexual y sin embargo no se considera?**

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- **¿Hay alguna guía de buenas prácticas en atención de la salud de lesbianas o bisexuales?**

No hay ningún tipo de investigación en salud sobre la incidencia o prevalencia entre las lesbianas y bisexuales de enfermedades físicas o mentales, ni de adicciones. Tampoco hay investigaciones sobre cuáles son las barreras de acceso a la atención de salud para lesbianas y bisexuales: económicas (por falta de cobertura de seguro de salud, por costo de medicamentos), prejuicios heterosexistas y lesbobifóbicos, falta de información o información errónea (muchas creen que si no tienen sexo con hombres no corren riesgo de transmisión de ITS), temor a que se revele la orientación sexual a terceros (especialmente si están en el closet frente a familiares, amigxs, empleadorxs, si viven en lugares pequeños, si son adolescentes, etc.), entre otras posibles.

No hay guías de buenas prácticas en la atención de salud de lesbianas y bisexuales, ni dedicadas a médicxs y enfermerxs ni al personal administrativo.

- **En el caso de atención de embarazo y parto, ¿existe alguna forma de discriminación o trato inferior a las lesbianas o bisexuales? ¿Se permite a la madre no gestante acompañar a la gestante durante el parto y posparto?**

Es variable la calidad de la atención del embarazo y parto de lesbianas y bisexuales. En algunos lugares el país encuentran prejuicios fuertes, en otros la atención es de igual calidad que para las heterosexuales.

Lo que no hay en ningún lado, ni consultorios privados ni centros públicos, es folletería o cartelera que dé la bienvenida e información a las lesbianas/bisexuales embarazadas y sus parejas ni que oriente en cuanto a derechos.

La Ley N°25.929 de Parto respetado, aprobada en 2004 y de alcance nacional, establece que toda mujer al momento de parir tiene derecho a ser acompañada por una persona de su elección. El cumplimiento de esta ley es muy deficitario porque en el país está muy extendida la violencia obstétrica, pero afecta particularmente a las clases populares (si bien hay casos gravísimos en clases medias y altas). El prejuicio y maltrato mayor no es por orientación sexual sino por clase. De manera que por lo general las lesbianas/bisexuales son acompañadas por sus parejas durante el parto y si hubiera internación posparto.

10) Educación

- **¿Has sabido de algún hecho de discriminación en el sistema educativo por ser lesbiana o bisexual o ser considerada como tal?**
- **¿Se aborda el tema del acoso escolar contra lesbianas o bisexuales en los establecimientos educativos de tu país? Lo mismo para instituciones de educación superior.**
- **¿Sabes si recientemente alguna lesbiana o bisexual denunció haber sido expulsada de la escuela por esa razón?**

No ha habido recientemente casos de expulsión de instituciones educativas basadas en la orientación sexual de lesbianas/bisexuales. Sí ha habido casos de acoso, que en general, y

no sólo cuando están basados en la orientación sexual o la identidad de género, son abordados de forma desigual por las distintas unidades educativas en el país, sin que haya uniformidad ni siquiera dentro de una misma provincia.

En muchas escuelas confesionales los contenidos heterosexistas, lesbofóbicos y bifóbicos son muy marcados y se deja suceder el acoso y discriminación entre pares o de algunxs docentes hacia estudiantes.

También ha habido casos de discriminación institucional, prohibiendo a parejas de chicas actos que sí se permiten a parejas de adolescentes heterosexuales, como tomarse de las manos o besarse dentro del establecimiento escolar. En el último tiempo, lxs estudiantes suelen repudiar estos actos. Por ejemplo, en octubre de 2019 la directora de una escuela religiosa para mujeres en la provincia de Tucumán prohibió a dos alumnas entrar a clases luego de que se estuvieran besando en la escuela (igual que parejas heterosexuales) y además comunicó a las madres y padres la orientación sexual de las chicas. Lo bueno fue que una buena parte de las demás estudiantes organizaron una protesta en la misma escuela, respaldando a las chicas sancionadas.

<https://www.lagaceta.com.ar/nota/822713/actualidad/alumnas-protestaron-porque-sancionaron-dos-chicas-se-besaron.html>

Anteriormente, en mayo de 2017, en una escuela pública del conurbano bonaerense (la zona de la provincia que rodea a la Ciudad Autónoma de Buenos Aires, y que son distritos diferentes), el director había prohibido a dos chicas que estaban de novias caminar de la mano durante el recreo. Como respuesta, la mayoría de lxs estudiantes organizaron un besazo masivo en el patio de la escuela.

https://www.clarin.com/sociedad/besazo-defender-derecho-chicas-tomarse-mano-recreo_0_Blp-G8v-Z.html

- **Los materiales educativos como manuales, libros de textos, películas ¿tienen representaciones positivas, negativas o no tienen representaciones de las lesbianas y las bisexuales?**

Existe a nivel nacional la Ley N° 26.150 de Educación Sexual Integral, sancionada en 2006, que reconoce y garantiza el derecho de todxs lxs estudiantes a recibir educación sexual integral en todos los niveles educativos, tanto en establecimientos públicos como privados. Esta ley contiene disposiciones para los contenidos curriculares, para la capacitación docente, para materiales de formación para estudiantes y docentes producidos por el Estado, y para los contenidos de los libros de texto y otros materiales de estudio. Sin embargo, todavía su aplicación es parcial y muy deficitaria, a pesar de que muchos sectores, incluyendo a estudiantes y sindicatos docentes, vienen reclamando su implementación adecuada. El texto de la ley ha sido criticado por heterosexista y cisexista, aunque existen capacitaciones y títulos de especialización para docentes que tienen una perspectiva más respetuosa de las sexualidades e identidades LGBT.

En cuanto a la mayoría de los libros de texto comerciales, en general no tienen representaciones de lesbianas ni de bisexuales.

11) Mujeres trans lesbianas y bisexuales

- **¿Hay en tu país alguna ley de identidad de género? ¿Exige “demostrar” la identidad de género y entre los requisitos tiene como exigencia mantener relaciones sexoafectivas con personas de otro género?**
- **¿Es obligatorio para las personas trans, en caso de haber estado casadas previamente, divorciarse para acceder al reconocimiento de su identidad de género?**
- **¿Cómo son recibidas las lesbianas y bisexuales trans en los espacios de lesbianas y bisexuales: hay discriminación, hostilidad, políticas de acceso basadas en ideas biologicistas? ¿Cómo son tratadas las parejas formadas por una lesbiana o bisexual cis y una trans?**

Desde 2012, Argentina tienen una Ley Nacional N° 26.743 de Identidad de Género. Se trata de una ley despatologizante y que no tutela a lxs individuos ni exige ningún tipo de demostración del género ni de la orientación sexual: se basa en los conceptos de los Principios de Yogyakarta sobre la autopercepción de la identidad de género, de manera que basta la declaración de la persona interesada en sede administrativa (el Registro Nacional de las Personas – registro civil) de que quiere adecuar sus datos registrales de nombre y género para que se realice el cambio. No hay tribunal judicial, médico ni multidisciplinario. No se exige ningún tipo de intervención médica como requisito de acceso a los cambios registrales, sino que se las considera un derecho al que las personas pueden optar y el Estado debe garantizar. No hay “test de la vida real”, períodos de prueba ni “demostraciones” de la identidad heterosexistas: las personas no deben mostrar que tienen parejas de otro sexo/género y no se disuelven los matrimonios de quienes estuvieren casadxs antes del cambio registral de su identidad de género. Por el contrario, la ley prevé que se adecuen todos los documentos ligados a la identidad de la persona: rectificación de partida de nacimiento propia y de lxs hijxs si lxs tuvieran, de sus actas de matrimonio, de sus títulos académicos y propietarios, laborales, de seguros, etc. De hecho, ha habido varios casos de mujeres trans que asumieron su transición públicamente de grandes, estando casadas (como hombres) con otras mujeres y con hijxs, que siguen teniendo esas relaciones.

La relación entre las lesbianas/bisexuales cis y las lesbianas/bisexuales trans varía según el contexto geográfico, el ámbito específico y el momento. Así, en los noventa imperaba una transfobia manifiesta, con pocas excepciones. Durante los primeros quince años del nuevo siglo, esa tendencia se revirtió, con muy buena acogida a las lesbianas/bisexuales trans en los lugares de lesbianas y algún lugar de bisexuales (su organización es mucho más reciente). Sin embargo, desde 2015 venimos viendo un rebrote del feminismo radical TERF con mucha virulencia. Se alimenta de la masificación del feminismo en el país desde el fenómeno Ni una menos (2015), con una afluencia masiva de mujeres, sobre todo

jóvenes, al movimiento, sin ninguna o escasa formación feminista, ni de historia del movimiento LGBT y sin contacto personal con travestis y mujeres trans. Esto derivó en terribles discusiones con grados de violencia verbal y simbólica en los paros de mujeres, las asambleas preparatorias de los 8 de marzo y los Encuentros Nacionales de Mujeres durante los últimos años. Los ENM se realizan desde hace 34 años, en las últimas ediciones reúnen entre 70 y 100 mil mujeres cada vez, y tienen una presencia fuerte de travestis y mujeres trans desde 2003.

Los espacios de lesbianas/bisexuales ligados al movimiento LGTB son los que mejor reciben y defienden a las lesbianas/bisexuales trans. Los más ligados al movimiento feminista son los más hostiles.

PARAGUAY

1. Criminalización

- **¿Existen en tu país leyes que penalizan a las relaciones entre personas del mismo sexo? (entendemos que la categoría de sexo es en sí misma problemática y que este enunciado podría entrar en cuestión en relaciones entre lesbianas o bisexuales cis y trans, pero es la forma en que habitualmente están redactadas estas leyes)**

No, no está penalizada la homosexualidad en las leyes.

- **¿Se aplican efectivamente contra las lesbianas o mujeres bisexuales?**

Hay casos de detenciones arbitrarias a lesbianas. En Aireana recibimos uno o dos cada año.

- **¿Existe algún otro tipo de normativa (nacional, estadual/provincial, municipal o emanada de la policía) referidas a demostraciones públicas de afecto, decencia, decoro, escándalo en la vía pública o alguna otra figura similar que se aplique contra las lesbianas y mujeres bisexuales?**

Algunas aluden a las buenas costumbres, exhibicionismo.

2. Reconocimiento de las relaciones de pareja

- **¿Existe en tu país alguna forma de reconocimiento legal de las parejas de lesbianas y/o mujeres bisexuales: ¿matrimonio, unión civil o alguna otra?**

No hay ningún tipo de reconocimiento. El matrimonio está definido en la constitución nacional como “unión estable entre hombre y mujer”. Tampoco se reconocen parejas de hecho o uniones civiles.

- En caso de existir. **¿Son de alcance nacional o rigen solo en algunos estados?**

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- **¿Puede una lesbiana o bisexual tomar decisiones médicas sobre su pareja si ésta se encuentra incapacitada para hacerlo por sí misma?**

En principio no puede porque no existe reconocimiento del vínculo.

- **¿Puede una lesbiana o bisexual darle cobertura de la seguridad social/seguro médico a su pareja?**

Puede haber seguros privados que admiten si las dos pagan, sería lo mismo que la suma de dos personas.

- **En caso de que una integrante de una pareja fallezca, ¿la sobreviviente tiene derecho a cobrar pensión de viudez, heredar, decidir sobre la disposición final del cuerpo de la otra?**

No. De hecho tenemos ejemplos terribles sobre eso. Una mujer de otra nacionalidad falleció y su pareja tuvo que recurrir a su hermano de sangre para que venga al país para decidir sobre el cuerpo.

- **Las lesbianas o bisexuales mayores que están en pareja, ¿pueden seguir viviendo juntas cuando son alojadas en geriátricos u otras instituciones de cuidados a personas mayores?**

NO tenemos información sobre eso.

- **En casos de violencia dentro de las parejas de lesbianas o bisexuales, ¿puede la que fue violentada recurrir a los refugios u otros servicios para mujeres maltratadas en vínculos íntimos?**

No es imposible, pero es difícil. Hemos recibido un caso donde un juez reconoció “violencia doméstica” entre dos mujeres. Y los albergues han recibido una vez a una lesbiana que era víctima de violencia pero en su familia de origen.

2. Familia

- **¿Tienen las lesbianas o bisexuales la posibilidad de acceder a tecnologías reproductivas? Si tienen los recursos para pagar, sí.**

Si no está prohibido.

- **¿hay alguna ley que lo regule o cada médicx sigue su propio criterio? ¿Hay alguna cobertura de la seguridad social/seguro de salud para hacerlo o el costo debe ser cubierto de forma individual?**

No está prohibido, solo regulado por el mercado. Y también depende de los prejuicios de la clínica que las reciba. Conocemos casos en que las chicas terminaron yendo a Argentina.

- **En el caso de que dos lesbianas o bisexuales tengan hijxs juntas, ¿pueden anotarlas en el registro civil como hijxs de las dos?**

NO

- **¿la madre no gestante debe adoptar a su hijx?, ¿no hay ninguna posibilidad de reconocimiento legal para las dos madres? Por favor, describir de la forma más completa posible la situación en tu país.**

No hay reconocimiento ninguno de las parejas o de las familias. Existen, por supuesto, pero están desprotegidas legalmente.

- **En caso de que dos madres lesbianas o bisexuales se separen, ¿hay algún tipo de garantía legal o costumbre judicial o de servicios estatales para garantizar que su hijx siga teniendo contacto con las dos?**

NO

- **¿hay algún mecanismo para que alguna de las madres pague alimentos a la otra si ésta pasa más tiempo a cargo del hijx?**

No, porque no hay reconocimiento.

- **En el caso de que la madre gestante fallezca o quede incapacitada, ¿la/el hijx queda a cargo de su otra madre o pierde contacto con ella y es puesto bajo custodia de la familia de origen de la madre gestante o del Estado? No conocemos casos de eso, pero como no existe ese reconocimiento, es difícil que suceda.**
- **Por favor, describe si los servicios educativos y de salud reconocen a las dos lesbianas o bisexuales como madres de su hijx o si sólo dan validez al vínculo de la gestante.**

Depende. En general no, pero recibimos un caso hace 4 años de una niña que tenía dos madres, hablaba eso en la escuela y quisieron prohibirle que hable de su familia porque era "un mal ejemplo". En aquel momento, en Ministerio de Educación intervino a favor de la niñas y sus dos madres. Ahora no pasaría eso.

- **Si una lesbiana o bisexual tuvo hijxs en una relación heterosexual anterior, ¿existe el riesgo de que pierda la tenencia de sus hijxs si se revela su orientación sexual?**

No conocemos ningún caso en que esto haya sucedido. Sí las familias de los ex maridos o los ex maridos tratan por todos los medios de sacarle a lxs hijxs pero hemos acompañado varios procesos donde siempre se quedan con la madre.

- **¿Existe alguna diferencia si estaba casada o no con el padre de lxs hijxs?**

No, ninguna diferencia.

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- **¿Existen casos donde los hombres chantajean con esa posibilidad a las lesbianas bisexuales para que acepten arreglos de divorcio económicamente desventajosos para ellas?**

Sí, totalmente. Incluso con acusaciones de abuso o consumo de estupefacientes para sacarle a los hijos. Lo que las mujeres quieren es tranquilidad y aceptan arreglos desventajosos con tal de que las dejen en paz.

- **¿Hay algún caso de reconocimiento de alguna familia multiparental, a través de la ley o de fallo judicial?**

No conocemos ningún caso

- **¿Es posible en tu país que una pareja de lesbianas o bisexuales adopte hijos de forma conjunta?**

No. Existen adopciones individuales pero no pueden adoptar conjuntamente porque el vínculo no está reconocido

3. Empleo

- **Si se revela la orientación sexual de una lesbiana en su lugar de trabajo, ¿puede perder su empleo por esa causa? ¿es legal o es algo que se hace bajo pretextos?**

Sí, puede perder su empleo. Pero casi nunca le expresan de forma clara que es por ser lesbiana. Con el tiempo, las redes sociales y la indignación de la gente ha influido mucho. Ahora nadie quiere que se sepa que discriminan, aunque igual lo hacen. No es legal, siempre hay excusas. Hace 12 años que se pretende tener una ley contra toda forma de discriminación pero no existe todavía.

- **¿En tu país hay empresas nacionales o internacionales que ofrezcan abiertamente programas de empleo para personas gltb?**

Por ejemplo, Google suele anunciar que es un empleador que no discrimina. No, empresas no. Solo las organizaciones sociales.

- **¿Es habitual que en los empleos haya códigos de vestimenta que reproducen roles de género heterocentros?**

Totalmente. Sobre todo en cosas de "atención al cliente"

- **¿Es posible pedir licencia para cuidar de la pareja lesbiana o bisexual en caso de enfermedad?**

No, en general. No conocemos casos. Pero en un momento las trabajadoras y trabajadores de ITAIPU tenían reconocidos los derechos de sus parejas gays o lesbianas.

- **Si el empleo ofrece cobertura de seguro de salud, ¿es posible para una lesbiana o bisexual extenderlo a su pareja?**

En principio no, pero puede haber empresas que lo acepten.

4. Vivienda

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- **¿Son frecuentes los casos en que se les niega a las lesbianas o bisexuales, solas o en pareja, alquilar una vivienda? ¿Es algo permitido legalmente o que se hace a pesar de no tener respaldo legal?**

No existe la discriminación legal pero sí en la práctica. Conocemos casos en los que se han negado alquileres o que incluso después de saberles han “invitado a retirarse”.

- **¿Se le piden condiciones especiales a las lesbianas o bisexuales para alquilar? Por ejemplo, pagar más caro, presentar más garantías de respaldo.**

No conocemos casos de esto.

- **¿Son frecuentes los casos en que vecinos hostigan a las lesbianas o bisexuales en sus casas?**

Hemos recibido varios casos de hostigamiento de los vecinos a parejas lesbianas. Por ejemplo un vecino que envenenó a la mascota de las lesbianas, la comisión vecinal decía que no podía tener cargo por ser lesbiana, que no podía quejarse del ruido por ser lesbiana. Etc.

- **¿Ha habido casos en que tu organización o algunas integrantes de la organización hayan tenido que albergar a lesbianas o mujeres bisexuales en sus propias casas?**

Siempre hemos buscado otras soluciones, como un hostel o otros alojamientos.

6. Acceso al crédito

- **¿Hay algún programa de acceso al crédito para mujeres u otras poblaciones vulnerables al que puedan apelar las lesbianas o bisexuales para sus propios emprendimientos económicos?**

No conocemos casos de que hayan solicitado crédito en forma conjunta.

- **Si piden crédito a un banco y son una pareja, ¿las reconocen como tal y computan conjuntamente los ingresos de ambas o las tratan como si no tuvieran relación entre sí?**

7. Violencia

- **¿Las lesbianas o bisexuales están expuestas a ataques físicos en la vía pública? ¿Es frecuente? ¿Los realizan particulares indistintos o miembros de algún grupo en especial, como neonazis?**

Recibimos algunos casos, pero no se denuncian. No hemos recibido casos de grupos neonazis por ahora. Pero siempre están los fundamentalistas religiosos dispuestos a sacar sus cruces como fue el 29 de septiembre 2019 con la marcha LGTBI en Hernandarias

- **¿Son frecuentes los ataques verbales o insultos lesbofóbicos o bifóbicos?**
- **¿Hay casos de violaciones correctivas?**

Si los hay, por favor describe cómo han sido tratados por la prensa y por el sistema judicial. Sabemos que hay, pero nadie denuncia ni salen en la prensa, ni llegan al sistema judicial.

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- **¿Las lesbianas o bisexuales están expuestas a violencia dentro de sus familias de origen? ¿A qué clases de violencia?**

Totalmente. Hay muchos casos de estos. Anualmente recibimos varios de adolescentes y jóvenes lesbianas cuyas familias les aíslan, les impiden incluso estudiar o trabajar, les obligan a estar con varones.

- **¿Están expuestas a acoso laboral o chantaje?**

Sí recibimos casos de acoso laboral a lesbianas. Incluso lesbianas que denuncian a acoso sexual a otras mujeres, son desvalorizadas por ser lesbianas.

- **¿Hay clínicas para “curar” el lesbianismo o la bisexualidad?**

NO conocemos, pero sabemos que hay psicólogas y psicólogos de pensamiento fundamentalista religioso que lo hace.

- **En tu país, ¿es legalmente posible que la familia de origen interne a una lesbiana o bisexual sin su consentimiento en una institución psiquiátrica debido a su orientación sexual?**

No es imposible. Hemos conocido un caso hace 3 años en el que una madre le drogó a su hija pareja de un chico trans, para llevarla a otra ciudad a internarla. No logró su objetivo de aislarla porque hubo intervención del Estado porque desde Aireana se denunció.

8. Políticas y prácticas antidiscriminatorias

- **¿Hay en tu país algún tipo de prohibición de discriminación, sea una ley o una normativa de menor rango? ¿Menciona específicamente a la orientación sexual y a la identidad o expresión de género?**

Existen varios planes y políticas públicas donde hay referencia a no discriminar por orientación sexual o identidad de género como el plan Nacional de Salud Sexual y Reproductiva, la reglamentación de la ley 5777 contra todo tipo de violencia, y varias normativas que no se aplican pero existen como:

- El reglamento para visitas íntimas de persona privadas de libertad (2012)
- Una ordenanza municipal de la ciudad e Villarica contra la discriminación.

- **¿Hay algún ente público donde se puedan hacer denuncias frente a actos discriminatorios? ¿Es eficiente o cumple sólo un rol nominal?**

No, no hay ley contra la discriminación, por lo tanto no hay mecanismo de denuncia ni hay organismo que se ocupe directamente.

- **¿Tu país realiza algún tipo de censo? ¿Registra de alguna forma a las lesbianas y bisexuales o a las parejas de lesbianas y/o bisexuales o a las familias con madres lesbianas o bisexuales?**

Hay censo, pero no hay registro de lesbianas.

- **Las lesbianas o bisexuales privadas de libertad, ¿tienen derecho a recibir visitas íntimas?**

NO. Hay un reglamento que lo permite pero no se aplica. En Aireana tenemos un largo trabajo al respecto. Se puede leer acá:

<https://www.aireana.org.py/incidencia-nacional-e-internacional/acciones/privadas-de-libertad/>

- **¿Hay lugares públicos de reunión social o política de las lesbianas y bisexuales? Bares, discos, sedes de organizaciones, librerías, etc.**

Sí, pero más diversos como La Serafina, espacio cultural feminista.

- **¿Hay figuras públicas de tu país que se presenten abiertamente como lesbianas o bisexuales? ¿Cuál es la reacción del público?**

Solo las activistas hasta ahora.

- **¿Hay algún caso en que tu país haya concedido asilo político o estatus de refugiadx a alguna persona con motivo de su orientación sexual o identidad de género? ¿Hay alguna declaración o medida oficial a favor o en contra de este reconocimiento?**

No, más bien al contrario. El gobierno incluso retrocedió frente a su posición favorable a migrantes a causa de los grupos fundamentalistas.

- **¿Cuál es la situación de las lesbianas o bisexuales migrantes en tu país? ¿Se les reconoce el derecho de reunión familiar? ¿Enfrentan mayor discriminación?**

No se reconocen los derechos de las lesbianas migrantes ni nacionales ni aunque tengan reconocido su matrimonio en otro país.

- **¿Es común que las lesbianas o bisexuales emigren de tu país por sentirse hostigadas por su orientación sexual? ¿Hacia dónde van, preferencialmente?**

Sí, a España, USA, Argentina.

- **¿Hay fenómenos de migración interna desde pueblos y ciudades chicas hacia otras más grandes motivados por climas sociales opresivos hacia las lesbianas o bisexuales?**

Totalmente. Desde ciudades y pueblos del interior hacia la capital o directamente a España.

9. Salud

- **¿Existen barreras específicas en el acceso a la salud para las lesbianas o bisexuales?**

En el clóset se tienen las mismas barreras que tienen todas las mujeres en un país con una salud pública de poco alcance.

- **¿Conoces prácticas discriminatorias en la atención de salud que afecte particularmente a las lesbianas o bisexuales?**

En la consulta ginecológica hay muchos casos de discriminación que van desde comentarios desubicados a negación de atención.

- **¿Hay temas/prácticas relacionadas con la salud de las mujeres (particularmente sexual y reproductiva) donde sería importante considerar la orientación sexual y sin embargo no se considera?**

Sí, no se considera aunque de alguna manera en el Plan Nacional de Salud Sexual y Reproductiva está establecido

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- **En el caso de atención de embarazo y parto, ¿existe alguna forma de discriminación o trato inferior a las lesbianas o bisexuales? ¿Se permite a la madre no gestante acompañar a la gestante durante el parto y posparto?**

En principio no, a no ser que haya algún arreglo personal con alguien del hospital. En los casos que conocemos, la madre no gestante fue víctima de discriminación pero más bien por parte de la familia biológica de la gestante.

- **¿Existen en tu país servicios de salud especializados/preparados para atender a las lesbianas o bisexuales? Por ejemplo, consultorios de ginecología con profesionales entrenadxs para no tener un enfoque heterosexista.**

No que lo expresen abiertamente, pero hay ginecólogas a instituciones que no discriminan.

- **¿Hay alguna guía de buenas prácticas en atención de la salud de lesbianas o bisexuales?**

Elaborada en Paraguay no.

10. Educación

- **¿Has sabido de algún hecho de discriminación en el sistema educativo por ser lesbiana o bisexual o ser considerada como tal?**

Sí, recibimos varios casos en educación secundaria y superior.

- **¿Se aborda el tema del acoso escolar contra lesbianas o bisexuales en los establecimientos educativos de tu país?**

Lo mismo para instituciones de educación superior. No, no se aborda. Y más desde que hay una prohibición explícita de Ministerio de Educación de hablar de género.

- **¿Sabes si recientemente alguna lesbiana o bisexual denunció haber sido expulsada de la escuela por esa razón?**

Recientemente no, pero sí ha habido caso de persecución, maltrato en años anteriores.

- **Los materiales educativos como manuales, libros de textos, películas ¿tienen representaciones positivas, negativas o no tienen representaciones de las lesbianas y las bisexuales?**

No existen esas representaciones y cuando existen es de forma negativa.

11. Mujeres trans lesbianas y bisexuales

- **¿Hay en tu país alguna ley de identidad de género? ¿Exige "demostrar" la identidad de género y entre los requisitos tiene como exigencia mantener relaciones sexoafectivas con personas de otro género?**

No hay ley de identidad de género.

- **¿Es obligatorio para las personas trans, en caso de haber estado casadas previamente, divorciarse para acceder al reconocimiento de su identidad de género?**
- **¿Cómo son recibidas las lesbianas y bisexuales trans en los espacios de lesbianas y bisexuales: hay discriminación, hostilidad, políticas de acceso**

basadas en ideas biologicistas? ¿Cómo son tratadas las parejas formadas por una lesbiana o bisexual cis y una trans?

En principio todo bien. No hay muchos debates sobre eso.