



HUMAN  
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WATCH

## “Every Day I Live in Fear”

Violence and Discrimination Against LGBT People in El Salvador,  
Guatemala, and Honduras, and Obstacles to Asylum in the United States



## **“Every Day I Live in Fear”**

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El Salvador, Guatemala, and Honduras, and  
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## Glossary

**Bisexual:** The sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Cisgender:** Denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth.

**Gay:** A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.

**Gender:** The social and cultural codes (linked to but not congruent with ideas about biological sex) used to distinguish between society’s conceptions of “femininity” and “masculinity.”

**Gender Identity:** A person’s internal, deeply felt sense of being female or male, both, or something other than female or male.

**Heterosexual:** The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

**Homophobia:** Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.

**Homosexual:** The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

**Intersex:** An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

**LGBT:** Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as “sexual and gender minorities.”

**LGBTI/LGBTQ/LGBTIQ/LGBTQI:** Umbrella terms used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are queer and/or intersex.

**Non-Binary:** Gender identity of people who identify as neither female nor male.

**Queer:** An inclusive umbrella term covering multiple identities, sometimes used interchangeably with “LGBTQ.” Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

**Sexual Orientation:** The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or other sex, or to both or others.

**Sexual Violence:** Any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.<sup>1</sup>

**Transgender:** The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

**Transgender Men:** Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

**Transgender Women:** Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

**Transphobia:** Fear of, contempt of or discrimination against transgender persons, usually based on negative stereotypes of transgender identity.

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<sup>1</sup> International Criminal Court, “Elements of Crimes,” <https://legal-tools.org/doc/3coe2d>, accessed September 17, 2020.

***Travesti:*** A term that has different meanings in different cultural contexts, but in Central America is generally claimed by people assigned male at birth, who transit towards the female gender. *Travestis* do not necessarily identify as women and sometimes use the term to denote a political identity.





## Summary

Camila Díaz Córdova, a 29-year-old transgender woman, tried for years to escape the violence that had characterized her life in El Salvador. She made her way to the United States in 2017 to seek asylum, but after four months in immigration detention, in November 2017, she was deported to El Salvador and to her eventual death.

On July 27, 2020, a court in El Salvador convicted three police officers of killing Díaz. Prosecutors alleged that on January 31, 2019, the officers had forced her into the back of a pickup truck, beaten her, and thrown her from the moving vehicle. She died several days later. The judge held that the evidence, including the vehicle's GPS tracking, the location where Díaz was found, and Díaz's autopsy report established the officers' criminal responsibility. It was the first time anyone had ever been convicted for killing a transgender person in El Salvador.

While this ruling represented a much needed first step toward accountability for anti-trans violence in El Salvador, hate crimes against lesbian, gay, bisexual and transgender (LGBT) people there and in neighboring Honduras and Guatemala have continued. Meanwhile, in the United States, the administration of Donald J. Trump has been busy closing doors to asylum seekers, including LGBT people from Central America.

In March 2020, the US government entirely closed its southern border to asylum seekers, leaving them to suffer persecution in their home countries or in Mexico. The Covid-19 pandemic served as the pretext for the closure, but for years, the Trump administration had adopted increasingly severe measures aimed at preventing asylum seekers from ever reaching the United States and expelling them quickly if they did cross the border. Measures included a program forcing asylum seekers to remain in Mexico for lengthy periods, an expedited asylum review process allowing for little or no contact with lawyers, an attempt to bar asylum seekers who transited through third countries before arriving at the US border, and a policy of transferring asylum seekers to Guatemala, where they did not have effective protection. Among the asylum seekers affected by all these measures were LGBT people, returned to conditions almost identical to those they had fled.

This report documents violence and discrimination against LGBT people in El Salvador, Guatemala and Honduras—collectively known as the Northern Triangle of Central America—and, in some cases, along the migration routes they take to seek asylum. It is based on 116 interviews with LGBT people from El Salvador, Guatemala, and Honduras and 93 government officials, nongovernmental organization representatives, United Nations officials, lawyers, journalists, and other stakeholders.

LGBT people in the Northern Triangle face high levels of violence, have limited protections under national law, and in recent years have fled home in significant numbers, undertaking perilous journeys to seek asylum in the United States. LGBT migration has taken place for years, but it first received significant media attention when LGBT people joined a series of migrant “caravans” that traveled in groups to the US-Mexico border beginning in 2017. Like others in the caravans, LGBT people were fleeing from high levels of generalized violence in certain areas, but many were also fleeing from persecution on the grounds of sexual orientation or gender identity.

Human Rights Watch interviewed LGBT people in and from the Northern Triangle who described the complex web of violence and discrimination that threatens their physical safety, limits their life choices, and in some cases leads them to flee their country. Some described violence at the hands of family members, leading them to flee home at as young as eight years old. Others described bullying and discrimination that drove them out of school or limited their academic success. Although no statistics are available on LGBT people’s economic situation in the Northern Triangle, many interviewees told us that family rejection and discrimination lead to a higher likelihood of economic marginalization, particularly for trans women, several of whom said they could not find any job other than sex work. Poverty in turn places LGBT people at high risk of violence from gang members, from other members of the public, and from police and other members of the security forces. And while victims of violence in El Salvador, Guatemala and Honduras generally face monumental challenges obtaining redress in the face of fragile institutions, corruption and gang influence, LGBT victims often face an additional barrier in the form of stigma and discrimination from the very law enforcement agents charged with keeping them safe.

Given the high levels of violence and discrimination that many LGBT people face in the Northern Triangle, the US government should be rigorously protecting LGBT asylum

seekers' ability to safely cross the border into the United States and apply for asylum. Instead, the Trump administration has implemented a seemingly unending series of obstacles, blocking LGBT people's path to safety at every turn.

Camila Díaz Cordova, among so many others, did not have to die. Responsibility for her death lies first and foremost with the Salvadoran police officers who killed her, but additional responsibility is borne by the US Immigration and Customs Enforcement (ICE) for its failure to give Camila a chance to make her asylum claim, resulting in her deportation to a place where she feared for her life.

Human Rights Watch calls on the US government to reverse the harmful policies that have virtually shut off access to asylum for LGBT and other asylum seekers from the Northern Triangle, including the March 2020 Centers for Disease Control and Prevention (CDC) order that closes the US southern border to asylum seekers. Immigration judges in the United States should be attentive to the multiple forms of violence and discrimination facing LGBT people from the Northern Triangle and should uphold the 1951 Refugee Convention and its 1967 Protocol by continuing to recognize LGBT people as members of a particular social group that is vulnerable to persecution.

The governments of El Salvador, Guatemala and Honduras should hold accountable public officials who carry out or are complicit in violence or discrimination on the grounds of gender identity or sexual orientation, and should take meaningful and rights-respecting steps through legal or policy reform to protect against discrimination on these grounds in all sectors including employment, education, housing, health care, and access to goods and services. They should strengthen existing systems for tracking and investigating crimes based on anti-LGBT animus and should, where hate crimes statutes exist, prosecute such offenses as hate crimes and hold those responsible accountable. They should establish administrative procedures for legal gender recognition that allow trans people to obtain documents that reflect their gender identity without unnecessary hurdles. Their leaders should make unambiguous statements of support for the rights of LGBT people, including the right to non-discrimination and the right to be free from violence.

Each day that passes without adequate protection puts the lives of LGBT people from the Northern Triangle at risk of persecution and abuse. The United States, and the Northern Triangle governments, have obligations to take steps to protect them.

# Recommendations

## Recommendations to the United States Government

### *To the Executive Branch*

- Cease to use tariffs, trade sanctions, foreign aid, or other measures to pressure other countries to enter into “third country” agreements, especially if these countries are unable to provide effective legal or physical protection to asylum seekers.

### *To the Attorney General*

- Make clear that the United States will comply with US and international refugee law by recognizing that persecution on the grounds of sexual orientation and gender identity is a legitimate basis for the grant of asylum.
- Make clear that the United States will comply with US and international refugee law by recognizing that individuals fleeing domestic violence in states that are unable or unwilling to provide adequate protection to them have a legitimate basis for the grant of asylum.
- Make clear that the United States will comply with US and international refugee law by recognizing that individuals fleeing gang violence in states that are unable or unwilling to provide adequate protection to them have a legitimate basis for the grant of asylum.

### *To the Centers for Disease Control and Prevention (CDC)*

- Withdraw the Interim Final Rule published in the Federal Register on March 24, 2020, and the CDC’s Order dated March 20, 2020, “Suspending the Introduction of Certain Persons from Countries Where a Communicable Disease Exists,” and ensure any public health-related regulation on entry of foreigners recognizes the US obligation to protect refugees from return to a threat of persecution, exposure to torture or cruel, inhuman or degrading conditions or punishment, or threats to life and physical security.

### *To the Department of Homeland Security*

- Withdraw the proposed Rule on Security Bars and Processing, which would bar from asylum and withholding of removal “aliens whose entry would pose a risk of further spreading infectious or highly contagious illnesses or diseases, because of declared public health emergencies in the United States or because of conditions in their country of origin or point of embarkation to the United States.”
- Withdraw the proposed federal rule to amend the regulations governing asylum, withholding of removal, credible fear, and reasonable fear standards and procedures.
- End the Migrant Protection Protocol (MPP). In the interim, issue regulations clarifying that lesbian, gay, bisexual and transgender (LGBT) people, whose safety cannot be assured in Mexico, are among the vulnerable groups exempted from it.
- End Prompt Asylum Claim Review (PACR) in order to ensure that all asylum seekers, including LGBT asylum seekers, have an opportunity to present their claims before an Immigration and Customs Enforcement agent and are able to seek legal counsel.
- End the “metering” system implemented by Customs and Border Patrol which limits the number of people allowed to enter the United States each day to make their case for asylum.
- Terminate the Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador, recognizing that none of these countries meet the criteria as safe third countries for asylum seekers, including those who are LGBT.
- Prioritize resources to ensure that ports of entry across the US-Mexico border can process and consider asylum claims in a fair and timely fashion.

### *To Immigration and Customs Enforcement (ICE, an agency of the Department of Homeland Security)*

- End all unnecessary immigration detention. In instances in which detention is warranted based on flight risk or danger demonstrated by the government to an immigration judge and regularly reviewed, locate immigration detainees in areas more accessible to families, lawyers, and community support. Provide persons in ICE custody with information in their own language, including orders of removal and other documents that they may be asked to sign.

### *To Congress*

- Prohibit the use of funds to implement the Migrant Protection Protocols, the Prompt Asylum Claims Review, the Asylum Cooperative Agreements, or any subsequent revisions to those protocols and agreements that block access to the right to seek asylum in the United States.
- Exercise its oversight authority by conducting hearings on the United States' fulfillment of its asylum and protection responsibilities, and on harms experienced by LGBT people forced to wait in Mexico for extended periods of time before claiming asylum, transferred to Guatemala, or deported from the United States to their countries of origin.
- Pass H.R. 3874, S. 3004 – Greater Leadership Overseas for the Benefit of Equality Act of 2019 (GLOBE) Act, which would build a framework into US diplomacy to protect LGBT human rights worldwide.

### *To the Department of State*

- Grant outstanding requests by the United Nations Special Procedures and the Inter-American Commission on Human Rights to visit the US-Mexico border for independent reporting and monitoring of policies and practices that affect the internationally recognized right to seek asylum.
- Provide adequate financial and technical support to accountability mechanisms in El Salvador, Guatemala, and Honduras aimed at investigating and documenting bias-based crimes, including within offices of the Attorney General and national human rights institutions.
- Provide financial and technical support to LGBT-led organizations in the Northern Triangle in all aspects of their work, including those related to documentation of human rights violations, advocacy, economic empowerment, and service provision.
- Publicly speak out in support the rights of LGBT people in the Northern Triangle and urge Northern Triangle governments to adopt policies to combat violence and discrimination against LGBT people.

### *To the US Agency for International Development (USAID)*

- Provide funding for services for LGBT victims of violence in the Northern Triangle, including shelters, psycho-social support, and livelihood programs.
- Increase financial and technical support to LGBT-led organizations in the Northern Triangle in all aspects of their work, including those related to documentation of human rights violations, advocacy, economic empowerment and service provision.
- Provide emergency assistance to LGBT people and human rights defenders working on issues related to gender and sexuality in the Northern Triangle when they face security threats.

## **Recommendations to the Government of El Salvador**

### *To the President and the Executive Branch*

- Create a specialized office charged with eradicating discrimination against LGBT individuals, promoting inclusive public policies, ensuring equal treatment in the provision of services, and increasing awareness and sensitivity about sexual orientation and gender identity. The government should provide this office with sufficient resources and operating budget to accomplish its aims.
- Engage directly with civil society organizations that promote and defend LGBT rights to discuss how best to improve protection of the rights of LGBT people.
- Terminate the Asylum Cooperative Agreement signed with the United States.
- Rigorously enforce Executive Decree 56 of 2010 that prohibits discrimination in the executive branch, and require all ministries and other government agencies to prohibit discrimination on the grounds of sexual orientation and gender identity in hiring, contracting, and all other activities, and to take steps to counter systemic anti-LGBT discrimination.

### *To the Attorney General's Office*

- Conduct prompt, thorough, and independent investigations into crimes against LGBT people to hold those responsible accountable.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police and prosecutors, receive training on sexual orientation and gender identity in order



better identify such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

- Train judges and prosecutors on hate crimes, including the elements of a hate crime under Salvadoran law, in order to ensure that bias-motivated crimes are prosecuted as such.

### *To Congress*

- Pass comprehensive civil non-discrimination legislation that explicitly includes sexual orientation and gender identity as protected classes and that covers sectors including, inter alia, education, employment, health, and housing, and ensure that any existing civil non-discrimination legislation is also applicable to discrimination on the grounds of sexual orientation and gender identity.
- Pass a gender identity law that allow people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the Civil Registry. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one's gender.

### *To the Ministry of Justice and Public Security*

- In collaboration with LGBT civil society organizations, train police and other ministry personnel on their obligations to uphold and protect the rights of LGBT people.

### *To the Ministry of Local Development*

- Establish support services for young people, including both children and young adults, who are expelled from their homes for reasons related to their sexual orientation or gender identity, including shelter, counseling services, educational services and job training.

### *To the Ministry of Education*

- Enforce policies that require all schools, public and private, not to discriminate against students on the basis of sexual orientation, gender identity or gender expression.
- Enforce anti-bullying policies that require all schools to take measures to prevent and respond to instances of bullying, including from staff and teachers, based on sexual orientation, gender identity and gender expression.
- Ensure that all curricula, including comprehensive sexuality education curricula, are inclusive of and reinforce acceptance of sexual and gender diversity.
- Provide students who have dropped out before completing high school, including LGBT people, with opportunities to complete their high school education, and reach out to LGBT organizations to ensure that LGBT young adults are aware of such opportunities.

### *To the Ministry of Labor*

- Reopen dialogue with LGBT civil society organizations about programming to provide employment and job training to LGBT people.

### *To the Department of Statistics and Census*

- Ensure the collection of data on discrimination, economic marginalization, and social exclusion on the grounds of sexual orientation and gender identity and the impact of such exclusion on economic development and individual well-being.

## **Recommendations to the Government of Guatemala**

### *To the President and the Executive Branch*

- Terminate the Asylum Cooperative Agreement signed with the United States.
- Through the Secretariat for Planning and Programming, formulate policies advancing the protection and promotion of LGBT people's human rights. Engage directly with civil society organizations that promote and defend LGBT rights to discuss how best to improve protection of the rights of LGBT people.

- Fulfill the commitment made to the Inter-American Commission on Human Rights in November 2012 to establish a comprehensive public policy to guarantee LGBT and intersex people's enjoyment of their rights.
- Express public support for the work of the Human Rights Ombudsperson's Office in advancing the protection of LGBT people's rights.
- Require all ministries and other government agencies to prohibit discrimination on the grounds of sexual orientation and gender identity in hiring, contracting, and all other activities, and to take steps to counter systemic anti-LGBT discrimination.

### *To the Attorney General's Office*

- Conduct prompt, thorough, and independent investigations into crimes against LGBT people to hold those responsible accountable.
- Issue guidance indicating that the Law on Femicide is applicable to violence against transgender women.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police and prosecutors, receive training on sexual orientation and gender identity in order to assist them in identifying such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

### *To Congress*

- Pass Initiative 5674 of 2019 on the prevention and punishment of bias-based crimes against LGBT people.
- Withdraw Initiative 5272, the Life and Family Protection Act, from consideration.
- Cease efforts to remove the current Ombudsperson based on his stances in support of LGBT people's rights and access to abortion.
- Pass comprehensive civil non-discrimination legislation that explicitly includes sexual orientation and gender identity as protected classes and that covers sectors including, inter alia, education, employment, health and housing, and ensure that any existing civil non-discrimination legislation is also applicable to discrimination on the grounds of sexual orientation and gender identity.

- Pass a gender identity law that allows people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the Civil Registry. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one's gender.

#### *To the Ministry of Interior*

- Issue a regulation clearly prohibiting discrimination on the basis of sexual orientation or gender identity and hold accountable law enforcement officers who engage in such discrimination.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police and prosecutors, receive training on sexual orientation and gender identity in order to assist them in identifying such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

#### *To the Ministry of Social Development*

- Establish support services for young people, including both children and young adults, who are expelled from their homes for reasons related to their sexual orientation or gender identity, including shelter, counseling services, educational services and job training.

#### *To the Ministry of Education*

- Adopt an anti-discrimination policy that requires all schools, public and private, not to discriminate against students on the basis of sexual orientation, gender identity or gender expression.
- Adopt an anti-bullying policy that requires all schools to take measures to prevent and respond to instances of bullying based on sexual orientation, gender identity and gender expression.
- Ensure that all curricula, including comprehensive sexuality education curricula, include and reinforce acceptance of sexual and gender diversity.

- Provide students who have dropped out before completing high school, including LGBT people, with opportunities to complete their high school education, and reach out to LGBT organizations to ensure that LGBT young adults are aware of such opportunities.

#### *To the Ministry of Labor*

- Launch a public campaign to inform employers and jobseekers that discrimination based on sexual orientation or gender identity is illegal.

#### *To the National Statistics Institute*

- Ensure the collection of data on discrimination, economic marginalization, and social exclusion on the grounds of sexual orientation and gender identity and the impact of such exclusion on economic development and individual well-being.

## **Recommendations to the Government of Honduras**

#### *To the President and the Executive Branch*

- Terminate the Asylum Cooperative Agreement signed with the United States.
- Prohibit the Military Police for Public Order from carrying out stops and searches of ordinary civilians at checkpoints and in the streets.
- Require all ministries and other government agencies to prohibit discrimination on the grounds of sexual orientation and gender identity in hiring, contracting, and all other activities, and to take steps to counter systemic anti-LGBT discrimination.

#### *To the Attorney General's Office*

- Conduct prompt, thorough, and independent investigations into crimes against LGBT people to hold those responsible accountable.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police and prosecutors, receive training on sexual orientation and gender identity in order to assist them in identifying such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

- Train judges and prosecutors in the elements of a hate crime in order to ensure that bias-motivated crimes are prosecuted as such.

#### *To the Ministries of Public Security and Defense*

- Issue a regulation clearly prohibiting discrimination on the basis of sexual orientation or gender identity and hold accountable law enforcement officers and military personnel who engage in such discrimination.

#### *To Congress*

- Pass comprehensive civil non-discrimination legislation that explicitly includes sexual orientation and gender identity as protected classes and that covers sectors including, inter alia, education, employment, health and housing.
- Pass a gender identity law that allow people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the Civil Registry. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one's gender.

#### *To the Secretariat of Human Rights, in collaboration with the Directorate for Childhood, Adolescence and Families*

- Establish support services for young people, including both children and young adults, who are expelled from their homes for reasons related to their sexual orientation or gender identity, including shelter, counseling services, educational services and job training.

#### *To the Ministry of Education*

- Adopt an anti-discrimination policy that requires all schools, public and private, not to discriminate against students on the basis of sexual orientation, gender identity or gender expression.
- Adopt an anti-bullying policy that requires all schools to take measures to prevent and respond to instances of bullying based on sexual orientation, gender identity and gender expression.

- Create a system to gather and publish data about bullying on the basis of sexual orientation and gender identity in schools.

*To the Ministry of Labor, in Conjunction with the Human Rights Ombudsperson's Office*

- In collaboration with LGBT organizations, conduct a national-level investigation into allegations of employment discrimination on the grounds of sexual orientation and gender identity, and sanction employers who violate national law by discriminating.
- Conduct a public messaging campaign to ensure that both employers and LGBT people are aware of the law that prohibits employment discrimination on the grounds of sexual orientation and gender identity.

## Methodology

This report is based on primary research conducted in 2019 and early 2020 in El Salvador, Guatemala, Honduras, Mexico, and the United States. The research was conceptualized in early 2019, when the arrival of several caravans of migrants and asylum seekers—initiating in Honduras and transiting through El Salvador, Guatemala, and Mexico, before arriving at the US Southern border—brought into sharp focus the specific human rights violations that impact LGBT people from the Northern Triangle so profoundly that many make the difficult and dangerous decision to leave their country.

Given the common experiences of LGBT asylum seekers from the Northern Triangle, and the fact that there are some similarities in their countries of origin with regard to legal protections (or lack thereof) and common forms of violence, Human Rights Watch decided to research violence and discrimination in all three countries.

This research was conceived with two primary objectives. The first was to contribute to preserving or improving access to asylum in the United States by providing accurate and reliable information based on firsthand testimony to US government decision-makers as well as individual immigration judges and attorneys about the country conditions from which LGBT people from the Northern Triangle are fleeing. The second was to use the report in advocacy work in collaboration with regional, national and local LGBT and other human rights organizations within the Northern Triangle to advance country-level reforms to mitigate violence and discrimination.

A Human Rights Watch researcher conducted interviews in El Salvador (San Salvador, La Unión, and San Miguel) in May and July 2019; in Guatemala (Guatemala City, Huehuetenango, Jalapa, Guastatoya, and Quetzaltenango) in May and August 2019; and in Honduras in May and August 2019 (Tegucigalpa, Comayagüela, San Pedro Sula, and El Progreso), where she interviewed LGBT people who had been victims of human rights abuses, representatives of LGBT organizations and other human rights organizations, government officials, and United Nations officials.

Human Rights Watch researchers also interviewed LGBT asylum seekers and representatives of organizations that provide them with legal representation and other



support in Mexico (Tijuana), and the United States (Los Angeles and Washington, DC), spoke by phone with LGBT activists from the Northern Triangle who had sought refuge in Switzerland and Spain, and communicated by phone and email with a wide range of organizations working on LGBT issues and refugee issues throughout the United States.

In total, Human Rights Watch interviewed 116 victims of anti-LGBT abuses.<sup>2</sup>

Country of Origin	Lesbian or Bisexual Women	Gay or Bisexual Men	Trans Women	Trans Men	Non-binary or Other	Total
El Salvador	2	10	17	9	1 non-binary, 2 <i>travesti</i>	41
Guatemala	7	23	19	1	1 <i>travesti</i>	51
Honduras	6	5	9	3	1 non-binary	24

Twenty of the interviewees were asylum seekers or refugees, whom Human Rights Watch interviewed in Mexico and the United States in December 2019 and January 2020.

The research focuses on violence and economic marginalization, which puts LGBT people at greater risk of violence. For that reason, the report includes cases of discrimination in education and employment but does not include other forms of discrimination such as in medical settings. Although we did document several such cases of discrimination, including sexual harassment from health providers on the grounds of sexual orientation or gender identity, these incidents did not clearly contribute to economic marginalization or physical violence. The exclusion of such incidents should not be taken to suggest that these are not serious human rights violations that merit further investigation and reporting.

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<sup>2</sup> Not all interviewees disclosed both their gender identity and their sexual orientation, and there may be some overlap between categories. For instance, a trans woman or man may also be lesbian, gay, or bisexual, but given the nature of the qualitative interviews conducted, some interviewees only identified themselves as trans without discussing their sexual orientation.

Interviewees who were victims of human rights violations were reached with the support of domestic LGBT rights organizations in El Salvador, Guatemala and Honduras, or with the support of immigration lawyers and organizations providing support services to asylum seekers and refugees in Mexico and the United States. Spanish-speaking Human Rights Watch researchers conducted the interviews in Spanish. Most interviews were conducted one-on-one in a private space, while some were conducted in small groups of individuals who knew one another and expressed comfort in speaking together. No compensation was provided to interviewees.

Human Rights Watch sought to interview people from across the LGBT spectrum, but the majority of people we interviewed were either trans people or gay men. There are several possible reasons for this.

First, we intentionally sought out cases of violence, and in many parts of the world, trans women and gay men may be at highest risk of being targeted by perpetrators of violence for violating gender norms. Second, lesbian and bisexual women are often less connected to LGBT rights organizations. Queer women-led organizations receive little donor funding, women may feel alienated or excluded by male-led or dominated groups, and women may have more difficulty securing the independence from families that facilitates participation in LGBT organizing. The skewed nature of our interview pool should not suggest that lesbian and bisexual women in the Northern Triangle are not victims of violence and discrimination based on their sexual orientation. Such violence may take place in the “private” sphere, be perpetrated by family members or intimate partners, and never be reported to police nor to human rights organizations.

Human Rights Watch also interviewed 93 other people who had knowledge of human rights violations affecting LGBT people in the Northern Triangle or during the asylum-seeking process in the United States, including government officials, United Nations officials, human rights activists, journalists and lawyers.

In addition, Human Rights Watch conducted a literature review, including reports published by LGBT organizations in the Northern Triangle and the United States, reports by regional and international bodies including the Inter-American Commission on Human Rights and United Nations agencies, US State Department reports, and court rulings from Northern Triangle countries and from the United States.

Human Rights Watch issued information requests to the governments of El Salvador, Guatemala and Honduras in July 2019, asking for available data on the number of cases of violence against LGBT people that had been reported to police, the number prosecuted, and the number resulting in convictions, and again in September 2020, asking for further information on efforts to combat violence and discrimination based on gender identity and sexual orientation. All three governments responded, and the country sections of this report provide further discussion of the information provided. The responses are also included in annexes to this report. During the drafting of this report, Human Rights Watch further engaged via email with government representatives, who provided feedback on specific cases.

Human Rights Watch did not conduct in-depth research in Mexico and therefore did not include recommendations to the Mexican government in this report. However, many LGBT interviewees reported on violations that took place in Mexico, either en route to the United States or in cases in which LGBT people from the Northern Triangle briefly sought refuge in Mexico, either formally applying for asylum or living in Mexico without documents, before returning to their countries of origin.

# I. Background

El Salvador, Guatemala, and Honduras, which comprise Central America's Northern Triangle, have among the world's highest murder rates.<sup>3</sup> Gang-related violence, much of it exported from the United States as a result of past deportations of members of street gangs initially formed in US cities in the 1980s and 90s, is persistent and pervasive.<sup>4</sup> Dozens of local and transnational gangs have a presence in each country, controlling the lucrative local drug trade and using violence as a tool to extort money and ensure compliance. The most dominant gangs are Mara Salvatrucha 13, also known as MS-13, and the 18th Street Gang, also known as Barrio 18, which currently operates as two separate factions.<sup>5</sup>

Gang violence presents a danger for residents of Northern Triangle countries from all walks of life but has a particularly strong impact on people living in low-income neighborhoods, many of which are effectively controlled by gangs.<sup>6</sup> Police rarely investigate gang-related violence, and most murders are never prosecuted.<sup>7</sup> In some cases, gangs specifically target LGBT people, killing, assaulting, threatening or extorting them for reasons that interviewees told Human Rights Watch might be linked to personal anti-LGBT animus; to assert social control or dominance; or because gangs recognize that LGBT people, particularly those who are poor, may have weak social support systems to protect them.

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<sup>3</sup> "Murder Rate Per Country 2020," World Population Review, <https://worldpopulationreview.com/country-rankings/murder-rate-by-country> (accessed September 10, 2020); United Nations Office on Drugs and Crime, "Global Study on Homicide 2019," <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html> (accessed September 10, 2020).

<sup>4</sup> Jonathan Pedneault (Human Rights Watch), "The Long Journey to the US Border," commentary, *Los Angeles Review of Books*, August 31, 2019, <https://www.hrw.org/news/2019/08/31/long-journey-us-border>; Daniel Denvir, "Deporting People Made Central America's Gangs. More Deportation Won't Help," *Washington Post*, July 20, 2017, <https://www.washingtonpost.com/news/posteverything/wp/2017/07/20/deporting-people-made-central-americas-gangs-more-deportation-wont-help> (accessed September 10, 2020).

<sup>5</sup> International Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America*, April 6, 2017, [https://d2071andvipowj.cloudfront.net/062-mafia-of-the-poor\\_o.pdf](https://d2071andvipowj.cloudfront.net/062-mafia-of-the-poor_o.pdf) (accessed September 10, 2020).

<sup>6</sup> See, for example, Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, February 5, 2020, <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and#110b6b>, section IV.

<sup>7</sup> Adriana Beltrán, "Children and Families Fleeing Violence in Central America," WOLA, February 1, 2017, <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle> (accessed September 10, 2020).

Violence in the Northern Triangle takes place along an economic axis. This holds true for gang violence but also for police violence: Human Rights Watch interviews suggest some police believe they can abuse or fail to attend to the needs of people living in poverty or who are otherwise marginalized without consequences. LGBT people in the Northern Triangle straddle various economic strata, but some, especially those who are trans and gender non-conforming, are pushed into the social and economic margins by a lifetime of discrimination. This systemic marginalization often begins with rejection and abuse by families: as documented in the following chapters, LGBT people from all three countries told Human Rights Watch of parents and other family members physically assaulting them and expelling them from their homes.

Education and employment discrimination on the grounds of sexual orientation or gender identity contribute further to economic marginalization, ultimately leaving many LGBT people without stable livelihoods and few housing options outside of poor and often gang-controlled neighborhoods.<sup>8</sup> A significant number of trans women in the Northern Triangle, often unable to obtain other employment, do sex work: a business that requires frequent interactions with gang members and police and sometimes exposes them to violence.

None of the governments in the Northern Triangle have criminalized same-sex conduct since the 19th century, but measures to protect LGBT people from discrimination are insufficient. As discussed further in the following chapters, Honduras outlaws employment discrimination on the grounds of sexual orientation and gender identity via its penal code, but activists in Honduras told Human Rights Watch they were not aware of any cases in which the law had been enforced.<sup>9</sup> El Salvador and Guatemala outlaw discrimination on various grounds, but do not explicitly include sexual orientation or gender identity, and even where such laws are open-ended in terms of the categories that they protect, they are not applied.<sup>10</sup> Additionally, to effectively curtail systemic discrimination, states should

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<sup>8</sup> None of the Northern Triangle countries maintain statistics that track economic vulnerability among LGBT people. The World Bank has urged countries to collect such data, in countries where it does not pose a risk to the privacy and security of LGBT individuals. World Bank and UNDP, *Investing in a Research Revolution for LGBTI Inclusion*, November 2016, <http://documents.worldbank.org/curated/en/196241478752872781/pdf/110035-WP-InvestinginaResearchRevolutionforLGBTIInclusion-PUBLIC-ABSTRACT-SENT.pdf> (accessed September 10, 2020).

<sup>9</sup> Republic of Honduras, Decreto 130-2017, Código Penal (Decree 130-2017, Penal Code), [https://www.tsc.gob.hn/web/leyes/Decreto\\_130-2017.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf) (accessed September 10, 2020), arts. 211-213.

<sup>10</sup> Republic of El Salvador, Código Penal (Penal Code), [https://www.oas.org/dil/esp/Codigo\\_Penal\\_El\\_Salvador.pdf](https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf) (accessed September 15, 2020), art. 246.a; Congress of the Republic of Guatemala, Decree 57-2002, <http://scm.oas.org/pdfs/2002/cp10270.pdf> (accessed September 10, 2020), art. 1.

prioritize adopting comprehensive civil and administrative laws banning discrimination. While the use of the criminal law is warranted when discrimination manifests itself in particular egregious forms—notably, acts of violence or incitement to violence—its focus on criminal intent, which needs to be established beyond a reasonable doubt, is inadequate to capture and sanction much discriminatory behavior.<sup>11</sup> None of the three countries has in place comprehensive civil law protections against discrimination.<sup>12</sup>

When it comes to protection against crime, the governments of El Salvador, Guatemala and Honduras have failed to curb gang violence against the population in general, but LGBT people may face an additional barrier to protection: in all three countries, LGBT people reported stigma and discrimination from police officers when they attempted to report crimes, deterring some LGBT crime victims from reporting at all, as discussed in Sections II to IV of this report.

Both Honduras and El Salvador have passed hate crimes legislation in the last 10 years, augmenting criminal penalties for some crimes that are motivated by anti-LGBT animus. While these are in principle important legal deterrents, neither country has convicted anyone on hate crimes charges.<sup>13</sup>

All three countries have procedures in place intended to collect data on anti-LGBT crimes, but in practice only collect such data inconsistently. The Inter-American Commission on Human Rights has noted that throughout the Americas:

Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is

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<sup>11</sup> In many countries, including in the Northern Triangle, governments have used the criminal law in ways that disproportionately impact particularly vulnerable or marginalized groups, including LGBT people, raising further concerns about its effectiveness and appropriateness as the primary tool to address discrimination.

<sup>12</sup> See Sections II, III and IV for more detail on the legal and policy context in each country. See also Section VI for further discussion of criminal, civil and administrative approaches to combating discrimination.

<sup>13</sup> REDLAC, “The Impact of Violence on the LGBTI Community in Northern Central America,” Snapshot No. 6, September 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/Protection%20Snapshot%206%20-%20English%20-%20September%202019.pdf> (accessed September 15), page 5.

not reflected in the records. Trans women are frequently identified in public records as ‘men dressed in women’s clothes.’<sup>14</sup>

In July 2019, Human Rights Watch wrote to the Attorney General’s offices and the Human Rights Ombudsperson’s offices in each country, requesting data on crimes. Their responses are included as annexes to this report.

Transgender people in the Northern Triangle are made particularly vulnerable by the lack of legislation providing for an administrative procedure to modify the sex marker on their official identification documents. A November 2017 advisory opinion issued by the Inter-American Court of Human Rights (IACtHR) stated that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression—as member states, including the Northern Triangle countries, are obligated to do under the American Convention on Human Rights—states should establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements, such as medical or psychiatric evaluation or divorce.<sup>15</sup>

To date, none of the Northern Triangle countries have done so, in contrast to several other Latin American countries.<sup>16</sup> The absence of legal gender recognition in El Salvador, Guatemala, and Honduras means that every time a transgender person is required to present an identification document, they risk being subjected to humiliation, discrimination, and even violence.<sup>17</sup>

Violence against transgender women in the Northern Triangle is of such significant magnitude that activists have coined the term “transfemicide” or “transfeminicide,”

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<sup>14</sup> Inter-American Commission on Human Rights, *Violence Against LGBTI Persons*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf> (accessed September 10, 2020).

<sup>15</sup> Inter-American Court of Human Rights, Advisory Opinion OC-24/17, November 24, 2017, [http://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf) (accessed September 10, 2020), pp. 43-72; Neela Ghoshal (Human Rights Watch), “For LGBT Rights, 2018 Will Be the Year of the Courts,” commentary, *Advocate*, January 24, 2018, <https://www.hrw.org/news/2018/01/24/lgbt-rights-2018-will-be-year-courts>.

<sup>16</sup> “OAS Presents Report on the Official Recognition of Gender Identity in the Countries of the Hemisphere,” OAS news release, E-058/20, June 2, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-058/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-058/20) (accessed September 10, 2020).

<sup>17</sup> Neela Ghoshal and Kyle Knight, “Rights in Transition: Making Legal Recognition for Transgender People a Global Priority,” Human Rights Watch, World Report 2016, <https://www.hrw.org/world-report/2016/rights-in-transition>.

referring to the murder of trans women because of their gender, as female, and gender identity as trans women.<sup>18</sup> The term acknowledges the intersectional violence and discrimination that trans women face under patriarchal social structures built around rigid gender norms and roles.

## Migration: A Pathway Out of Violence

Between January 2007 and November 2017, at least 4,385 people sought asylum in the United States based on claims of persecution related to gender identity or sexual orientation, according to data NBC News obtained through a Freedom of Information Act request to United States Citizenship and Immigration Services.<sup>19</sup> The three countries producing the most LGBT asylum seekers in the United States per capita were El Salvador (with 1,228 asylum seekers filing claims based on sexual orientation or gender identity during that period), Honduras (651), and Guatemala (369).<sup>20</sup> The data is unsurprising given the Northern Triangle countries' largely unchecked anti-LGBT violence and their proximity to the United States. The migration-focused network REDLAC writes that for many LGBT people from the Northern Triangle "the only available coping mechanism is internal or cross-border displacement, and seeking asylum in the United States or Mexico (although not all those who are forcibly displaced seek asylum and many are unaware of their right to do so)."<sup>21</sup>

Undoubtedly, for decades, individual LGBT people from the Northern Triangle have fled their countries for reasons related in part to discrimination and violence based on gender identity or sexual orientation. However, LGBT asylum seekers around the world were largely invisible in the international arena before 2008, when the office of the United Nations High Commissioner for Refugees (UNHCR) issued its first guidance on refugee

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<sup>18</sup> Transfemicide/transfeminicide has been recognized officially as a category of violence by the governments of Argentina and of Mexico City, both of which have among the world's most rights-respecting gender identity laws. It has not been recognized by governments in the Northern Triangle.

<sup>19</sup> Tim Fitzsimons, "Trump Proposals Threaten LGBTQ Asylum-seekers' Hopes of Refuge in U.S.," *NBC News*, August 20, 2020, <https://www.nbcnews.com/feature/nbc-out/trump-proposals-threaten-lgbtq-asylum-seekers-hopes-refuge-u-s-n1236736> (accessed September 10, 2020).

<sup>20</sup> According to NBC's data, in absolute numbers, Mexico produced more LGBT asylum seekers than Guatemala, but given relative population size, Guatemala produced more per capita.

<sup>21</sup> REDLAC, "The Impact of Violence on the LGBTI Community in Northern Central America," <https://reliefweb.int/sites/reliefweb.int/files/resources/Protection%20Snapshot%206%20-%20English%20-%20September%202019.pdf>, p. 1.



claims related to sexual orientation and gender identity.<sup>22</sup> The guidance, intended to complement earlier guidance issued in 2002 on persecution based on gender, asserted that LGBT people fleeing persecution on the grounds of sexual orientation and gender identity should be recognized as eligible for refugee status under the Refugee Convention, which provides for protection on grounds including race, religion, nationality, membership of a particular social group and political opinion. UNHCR noted that “the transgression of social or religious norms, including by expressing one’s sexual orientation or identity, may be analyzed in terms of political opinion, religion or membership of a particular social group,” although most LGBT claims are processed under the latter category.<sup>23</sup>

In August 2017, the first recognized “caravan” of transgender and gay asylum seekers from Central America arrived in the United States, escaping violence in their countries of origin.<sup>24</sup> It was followed by other caravans of hundreds of migrants and asylum seekers that included Central Americans from all walks of life, including LGBT people, in 2018 and 2019.<sup>25</sup> Like others in the caravans, LGBT people were fleeing from some forms of violence that cut across all genders and sexualities, but many were also fleeing persecution on the grounds of sexual orientation or gender identity.

## Obstacles to Asylum in the United States

When it comes to the rights of LGBT people, the administration of President Donald J. Trump has paid lip service to some rights and denigrated others, eroding, in particular, the

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<sup>22</sup> UNHCR, “UNHCR Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity,” November 21, 2008, <https://www.refworld.org/pdfid/48abd5660.pdf> (accessed September 10, 2020).

<sup>23</sup> *Ibid.*, paras. 29-32.

<sup>24</sup> “Caravan of 17 LGBT Central American Migrants Seeking Asylum to Arrive at US-Mexico Border,” Transgender Law Center press release, August 10, 2017, <https://transgenderlawcenter.org/archives/13983> (accessed September 10, 2020); María Inés Taracena, “Displaced LGBT People from Central America, Mexico Head North for Survival,” *Arizona Public Media*, September 8, 2017, <https://news.azpm.org/p/news-topical-border/2017/9/8/116373-displaced-lgbt-people-from-central-america-mexico-head-north-for-survival> (accessed September 10, 2020).

<sup>25</sup> Maya Srikrishnan, “Border Report: A Caravan Within the Caravan Has Arrived in Tijuana,” *Voices of San Diego*, November 12, 2018, <https://www.voiceofsandiego.org/topics/news/border-report-a-caravan-within-the-caravan-has-arrived-in-tijuana> (accessed September 10, 2020); Michael K. Lavers, “Group of 30 LGBTI migrants enter Mexico from Guatemala,” *Washington Blade*, February 2, 2019, <https://www.washingtonblade.com/2019/02/02/group-of-30-lgbti-migrants-enter-mexico-from-guatemala> (accessed September 10, 2020). An additional caravan attempted to cross from Guatemala to Mexico in January 2020, but Mexican security forces pushed most of the asylum seekers and migrants back across the border. In June 2020, media reported that another caravan departed from San Pedro Sula, Honduras, with the intention of reaching the United States through Guatemala and Mexico. Elvin Sandoval, “New Caravan of Honduran Migrants Leaves for the United States” (“Nueva caravana de migrantes hondureños parte rumbo a Estados Unidos”), *CNN Español*, June 30, 2020, <https://cnnespanol.cnn.com/2020/06/30/alerta-nueva-caravana-de-migrantes-hondurenos-parte-rumbo-a-estados-unidos> (accessed September 10, 2020).

rights of transgender people. Numerous policy enactments belie the Trump administration's professed concern for the safety and security of LGBT people, at home and abroad.<sup>26</sup> Among them are asylum and immigration policies that endanger asylum seekers, including LGBT people fleeing grave danger in the Northern Triangle.

On March 20, 2020, in response to the Covid-19 pandemic, the Centers for Disease Control and Prevention (CDC) issued a public health rider authorizing US Customs and Border Protection (CBP) to summarily expel unauthorized migrants, including asylum seekers and children, without considering whether they are eligible for protection under US law.<sup>27</sup> The order is grounded in the CDC's quarantine powers under Title 42 of the Code of Federal Regulations, rather than Title 8, which covers immigration. It utilizes a medical quarantine rationale to countermand protections in US immigration law for refugees and short circuits the right of asylum seekers for an opportunity to lodge claims or have them examined.<sup>28</sup> In the first five months after the CDC order was issued, CBP summarily expelled more than 105,000 people from the United States based on the order.<sup>29</sup> The CDC order marks the first time, since the US Refugee Act was enacted in 1980, that asylum seekers have been summarily turned away at the border, with no chance to make their case for asylum and no regard to the risk they might face in Mexico or in their countries of origin.<sup>30</sup>

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<sup>26</sup> National Center for Transgender Equality, "The Discrimination Administration," last updated July 2020, <https://transequality.org/the-discrimination-administration> (accessed September 10, 2020).

<sup>27</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention, Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, May 19, 2020, [https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal\\_5-19-20-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf) (accessed September 15, 2020); Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, March 24, 2020, <https://www.federalregister.gov/documents/2020/03/24/2020-06238/control-of-communicable-diseases-foreign-quarantine-suspension-of-introduction-of-persons-into> (accessed September 15, 2020); Human Rights Watch, "Human Rights Watch Comment on CDC Interim Final Rule Suspending Entry of Persons into the US," April 23, 2020, <https://www.hrw.org/news/2020/04/23/human-rights-watch-comment-cdc-interim-final-rule-suspending-entry-persons-us>.

<sup>28</sup> See Lucas Guttentag, "Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors," *Just Security*, April 13, 2020, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors> (accessed September 11, 2020).

<sup>29</sup> US Customs and Border Protection, "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions," <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (accessed September 11, 2020).

<sup>30</sup> Dara Lind, "Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law," *ProPublica*, April 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law> (accessed September 11, 2020).

Even before the United States shut down the border altogether as part of its response to Covid-19, an array of obstacles hindered access to asylum. They are discussed briefly here, with further detail provided in Section V of this report.

**Metering** is a “slow down” strategy implemented by CBP that artificially limits the number of asylum seekers who can enter the United States at border crossings every day. Even before the US shut down the border altogether as part of its response to Covid-19, metering forced asylum seekers to wait in Mexican border cities for as many as six months before they even underwent the first step in the US of the asylum procedure, a credible fear interview.<sup>31</sup> This delay tactic has a particularly pernicious effect on LGBT asylum seekers, who face discrimination and violence in Mexican border cities on the basis of their gender identity or sexual orientation.

The **Migrant Protection Protocol (MPP)**, also known as the “Remain in Mexico” program, forces asylum seekers to remain in Mexico while their asylum claims are adjudicated in the United States. A DHS memo exempts “individuals from vulnerable populations ... on a case-by-case basis,” meaning that such individuals can remain in the United States as their claim is adjudicated, but the memo does not include LGBT people as members of a vulnerable group, and Human Rights Watch has received reports of LGBT people placed in “Remain in Mexico”.<sup>32</sup> MPP hearings have been on hold since March 2020, extending asylum seekers’ wait.

The **Prompt Asylum Claim Review (PACR)** process, initiated by CBP in October 2019, fast-tracks removal proceedings for asylum seekers who arrive at the US border. The expedited process creates conditions by which traumatized individuals may feel discouraged to speak openly about the persecution that they have fled.<sup>33</sup> PACR was suspended in March

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<sup>31</sup> Human Rights Watch interview with Chris Chambers, Casa Arcoíris, Tijuana, January 31, 2020.

<sup>32</sup> Human Rights Watch, *‘We Can’t Help You Here’: US Returns of Asylum Seekers to Mexico*, July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>; Human Rights Watch interview with Emem Maurus, Tijuana, January 30, 2020.

<sup>33</sup> “A Timeline of the Trump Administration’s Efforts to End Asylum,” National Immigrant Justice Center, last updated March 2020, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-04/04-01-2020-asylumtimeline.pdf> (accessed September 11, 2020), p. 5.

2020 following the CDC order that closed the border to asylum seekers.<sup>34</sup>

**The Guatemala Asylum Cooperative Agreement (ACA)**, an agreement between the US and Guatemalan governments in July 2019, enables the United States to rapidly expel non-Guatemalan asylum seekers to Guatemala without allowing them to lodge asylum claims in the United States, but also leaves them without access to effective protection in Guatemala.<sup>35</sup> As a result, many feel compelled to abandon their asylum claims and return to their home countries where they are at real risk of serious harm.<sup>36</sup> For a Salvadoran or Honduran LGBT person who has fled the brutality of gangs and sometimes the authorities in their home country, being forcibly transferred to Guatemala, where many asylum seekers fear they will face similar forms of persecution as in their home countries, is a devastating blow. The risk of harm to asylum seekers returned to Guatemala is so severe that Human Rights Watch and Refugees International issued a joint report in May 2020 calling on both governments to rescind the policy in its entirety.<sup>37</sup>

The Departments of Justice and Homeland Security even sought to institute a strict prohibition on asylum in the United States for any asylum seeker who passes through any other country on the way to the United States, known as the Third-Country Asylum Rule. A federal court struck down the rule on June 30, 2020 on procedural grounds.<sup>38</sup>

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LGBT asylum seekers who do get past these obstacles and are able to apply for asylum within the borders of the United States continue to be subjected to human rights violations.

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<sup>34</sup> Jorge Loweree, Aaron Reichlin-Melnick and Walter Ewing, “The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System,” American Immigration Council, May 27, 2020, <https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system> (accessed September 11, 2020).

<sup>35</sup> ACAs have also been signed with Honduras and El Salvador, but transfers have not started to either country at time of writing.

<sup>36</sup> Refugees International and Human Rights Watch, *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*, May 19, 2020, <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>.

<sup>37</sup> Ibid.

<sup>38</sup> Kellie Mejdrich, “Federal Court Strikes Down Trump’s Asylum Ban,” *Politico*, July 1, 2020, <https://www.politico.com/news/2020/07/01/federal-court-strikes-down-trumps-asylum-ban-346939> (accessed September 11, 2020).

Many spend months, sometimes upwards of a year, in Immigration and Customs Enforcement (ICE) detention. ICE officials often detain trans women with men.<sup>39</sup> Human Rights Watch has documented abuses of trans women in ICE custody, including sexual assault by other detainees, humiliating strip searches by male guards, unreasonable use of solitary confinement, and inadequate access to medical care.<sup>40</sup> In 2018 and 2019, two deaths of trans women were linked to insufficient medical attention in ICE facilities. In January 2020, 45 members of Congress called on ICE to release all transgender migrants and asylum seekers from detention, arguing that ICE could not guarantee their health and safety.<sup>41</sup> Organizations have also documented human rights abuses against gay asylum seekers in ICE custody.<sup>42</sup>

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<sup>39</sup> Human Rights Watch telephone interview with Allegra Love, director, Santa Fe Dreamers Project, June 12, 2020.

<sup>40</sup> “US: Transgender Women Abused in Immigration Detention,” Human Rights Watch news release, March 23, 2016, <https://www.hrw.org/news/2016/03/23/us-transgender-women-abused-immigration-detention>.

<sup>41</sup> Tim Fitzsimons, “Democratic Lawmakers Call on ICE to Release Transgender Migrants,” *NBC News*, January 16, 2020, <https://www.nbcnews.com/feature/nbc-out/democratic-lawmakers-call-ice-release-transgender-migrants-n1116621> (accessed September 11, 2020); Transgender Law Center, “Roxsana Hernandez: Case Summary,” <https://transgenderlawcenter.org/legal/immigration/roxsana> (accessed September 11, 2020); Sandra E. Garcia, “Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse,” *New York Times*, November 27, 2018, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html> (accessed September 11, 2020).

<sup>42</sup> “Immigrant Rights Advocates Demand Investigation And Meeting With Ice And Elected Officials To Address Mistreatment Of Gay Men And Transgender Women In Otero County Processing Center,” American Civil Liberties Union (ACLU) news release, March 22, 2019, <https://www.aclu-nm.org/en/press-releases/immigrant-rights-advocates-demand-investigation-and-meeting-ice-and-elected-officials> (accessed September 11, 2020); Immigration Equality, Complaint to Office of Civil Rights and Civil Liberties Re HIV Care in Detention Facilities, March 23, 2020, <https://www.immigrationequality.org/wp-content/uploads/2020/03/Complaint-to-Office-of-Civil-Rights-and-Civil-Liberties-Re-HIV-Care-in-Detention-Facilities.pdf> (accessed May 14, 2020).

## II. El Salvador

I could no longer endure this situation. I couldn't continue this life; it was no longer a life at all. I was suffering at the hands of my neighbors, gangs, my family, and the authorities of my country.

—Pricila P., trans woman from San Salvador, Los Angeles, California, US, December 11, 2019

### Background

In 2015, El Salvador had the highest murder rate in the world.<sup>43</sup> Five years later, its homicide rate remains among the world's highest.<sup>44</sup> El Salvador also has thousands of missing-persons cases and sexual crimes, according to data from the Attorney General's office.<sup>45</sup>

State authorities have historically been largely ineffective in protecting the population from this violence, often perpetrated by gangs, whom President Nayib Bukele, elected in 2019, has described as running “a parallel state.”<sup>46</sup> Authorities may be unable to help protect Salvadoran citizens who are victimized by violence for reasons including fear for their own security, infiltration of authorities' offices by gangs, and insufficient resources.<sup>47</sup>

At the same time, Salvadoran security forces have themselves committed extrajudicial executions, sexual assaults, enforced disappearances, and torture. Impunity is widespread. The United Nations special rapporteur on extrajudicial executions in 2019 denounced a “pattern of behaviour amongst security personnel, amounting to extrajudicial

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<sup>43</sup> United Nations Office of the High Commission for Human Rights, El Salvador End of Mission Statement, Agnes Callamard, special rapporteur for extrajudicial, summary or arbitrary executions, February 5, 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E> (accessed September 11, 2020).

<sup>44</sup> United Nations Office on Drugs and Crime, “Global Study on Homicide 2019,” <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>.

<sup>45</sup> Data obtained via public information request to the Salvadoran Attorney General's Access to Public Information Office for crime incidence data throughout El Salvador, data on homicides between 2013-2017 were received November 9, 2018 and data on sexual crimes between 2013-2017 were received November 1, 2018. Homicide data for 2018 were received February 18, 2019, sexual crime data for 2018 were received February 25, 2019 (on file with Human Rights Watch).

<sup>46</sup> Sharyn Alfonsi, “Our Whole Economy is in Shatters’: El Salvador’s Nayib Bukele on the Problems Facing His Country,” *CBS News*, December 15, 2019, <https://www.cbsnews.com/news/el-salvador-president-nayib-bukele-the-60-minutes-interview-2019-12-15> (accessed September 11, 2020).

<sup>47</sup> Human Rights Watch, *Deported to Danger*, p. 73.

executions and excessive use of force, which is fed by very weak institutional responses, including at the investigatory and judicial level.” Her report referred to abuses by the police and the army.<sup>48</sup> The Salvadoran Ombudsperson for the Defense of Human Rights (PDDH) found that investigations reached hearings in only 14 of 48 cases involving 116 extrajudicial killings committed by police from 2014 to 2018, and only two led to convictions.<sup>49</sup>

An estimated 38 percent of Salvadorans live in poverty, and about 8 percent in extreme poverty.<sup>50</sup> Only about a quarter of households have access to basic services like education, health, and infrastructure, and a quarter of the population is employed in the formal sector.<sup>51</sup> Human Rights Watch identified 138 cases in which people deported by the United States to El Salvador in the past seven years had been killed, and an additional 70 cases in which people suffered severe abuse, including sexual assault or torture, after being deported from the United States to El Salvador.<sup>52</sup>

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<sup>48</sup> United Nations Office of the High Commission for Human Rights, El Salvador End of Mission Statement, Agnes Callamard, special rapporteur for extrajudicial, summary or arbitrary executions, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E>.

<sup>49</sup> Human Rights Ombuds Office (Procuraduría para la Defensa de los Derechos Humanos), “Special Report of the Ombuds for the Defense of Human Rights, Attorney Raquel Caballero de Guevara, About Extralegal Executions Attributed to the National Civilian Police in El Salvador, Period 2014-2018: Characterization of Cases of Violation of the Right to Life and Patterns of Extralegal Action” (“Informe especial de la señora Procuradora para la Defensa de los Derechos Humanos, licenciada Raquel Caballero de Guevara, sobre las ejecuciones extralegales atribuidas a la Policía Nacional Civil, en El Salvador, periodo 2014-2018: Caracterización de casos de violación al derecho a la vida y patrones de actuación extralegal”), August 2019, <https://www.pddh.gob.sv/portal/file/index.php?dwfile=MjAxOS8xMC9JbmZvcmlLLWVzcGVjaWFsLXNvYnJLLWVqZWZWN1Y2l2bWVzLWV4dHJhbGVnYWxlcyoXLTEucGRm> (accessed May 9, 2020), pp. 87-89. See also Nelson Rauda Zablach and Gabriela Cáceres, “PDDH: Police Executed 116 People Between 2014 and 2018” (“PDDH: La Policía ejecutó a 116 personas entre 2014 y 2018”), *El Faro*, August 28, 2019, [https://elfaro.net/es/201908/el\\_salvador/23592/PDDH-La-Polic%C3%ADa-ejecut%C3%B3-a-116-personas-entre-2014-y-2018.htm?fbclid=IwAR3MMMkRWyebfe1kq8\\_qR\\_23R-MKzynnJmvt4jvpc4CqwUbn8MTtp4xl](https://elfaro.net/es/201908/el_salvador/23592/PDDH-La-Polic%C3%ADa-ejecut%C3%B3-a-116-personas-entre-2014-y-2018.htm?fbclid=IwAR3MMMkRWyebfe1kq8_qR_23R-MKzynnJmvt4jvpc4CqwUbn8MTtp4xl) (accessed September 11, 2020).

<sup>50</sup> Economic Commission for Latin American and the Caribbean (ECLAC), *Social Panorama of Latin America 2018 (Panorama Social de América Latina 2018)*, [https://repositorio.cepal.org/bitstream/handle/11362/44395/1/S1900051\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/44395/1/S1900051_es.pdf) (accessed September 11, 2020), p. 83.

<sup>51</sup> *Ibid.*, pp. 39, 194.

<sup>52</sup> Human Rights Watch, *Deported to Danger*.

## Sexual Orientation and Gender Identity in El Salvador

### *Legal and Policy Context*

When it comes to its laws and official policies, El Salvador stands ahead of most Central American nations in recognizing the rights of LGBT people, but its legal and policy environment is still lacking in protections.

El Salvador is the only Central American member of the LGBTI Core Group at the United Nations, a group of countries that since 2008 has advocated for best practices on upholding the rights of LGBT and intersex people.<sup>53</sup>

The constitutional chamber of the Supreme Court ruled in 2009 that a provision in the country's constitution that protects against discrimination based on "nationality, race, sex or religion" applies to sexual orientation, citing United Nations Human Rights Committee jurisprudence. The ruling does not reference gender identity, although its findings—including that the grounds referred to in article 3 of the constitution are illustrative and not limiting—could be equally applicable to gender identity.<sup>54</sup>

Article 246 of the penal code prohibits job discrimination based on "sex, pregnancy, origin, civil status, race, social or physical condition, religious or political beliefs, membership or lack of membership in a labor union, or relationship with other workers."<sup>55</sup> The term "sex" has been held to be inclusive of sexual orientation and gender identity in some jurisdictions elsewhere in the world, including by the United States Supreme Court, but no existing jurisprudence or authoritative legal guidance in El Salvador makes clear whether such grounds are covered under article 246.<sup>56</sup> Article 292 of the penal code criminalizes discrimination by government officials on the grounds of "nationality, sex, race, religion, or any other condition of a person," creating space for prosecutions on the grounds of discrimination based on sexual orientation and gender identity, but the law

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<sup>53</sup> UN LGBTI Core Group, <https://unlgbticoregroup.org> (accessed September 11, 2020).

<sup>54</sup> Republic of El Salvador, Supreme Court of Justice, Constitutional Chamber, Decision 18-2004 of December 9, 2009, <https://www.comcavis.org.sv/archivos/categorizados/63.pdf?1586958596> (accessed September 11, 2020).

<sup>55</sup> Republic of El Salvador, Código Penal (Penal Code), [https://www.oas.org/dil/esp/Codigo\\_Penal\\_EL\\_Salvador.pdf](https://www.oas.org/dil/esp/Codigo_Penal_EL_Salvador.pdf), art. 246.

<sup>56</sup> Ryan Thoreson, "US Supreme Court Ruling A Victory for LGBT Workers," Human Rights Watch dispatch, June 15, 2020, <https://www.hrw.org/news/2020/06/15/us-supreme-court-ruling-victory-lgbt-workers>.



does not cover abuses by non-state actors.<sup>57</sup> In response to an information request from Human Rights Watch, El Salvador's Attorney General's office affirmed that no one has ever been convicted for discrimination based on sexual orientation or gender identity.<sup>58</sup> In addition, the criminal law, which has historically been abusively used against LGBT people, should not be the primary framework used to protect against discrimination and to hold those who discriminate to account. Non-criminal anti-discrimination provisions include Executive Decree 56 of 2010, which states that any executive branch policies, activities, actions, omissions that result in discrimination on the basis of sexual orientation or gender identity are prohibited, and that all policies need to be reviewed for compliance with the decree.<sup>59</sup> While an important measure, the decree, which only applies to the executive branch and not to other public or private actors, is of limited application. There is no comprehensive civil law prohibiting discrimination by public and private actors.

Executive Decree 56 led to the establishment of El Salvador's Directorate on Sexual Diversity, which was charged with training government employees, including police officers, on sexual orientation and gender identity and conducting research on LGBT issues in the country.<sup>60</sup> In 2017, the directorate launched an Inclusion Index aimed at setting standards and evaluating all government ministries and agencies on LGBT inclusion. This seemed to motivate government institutions: several vaunted the scores they received in their first evaluation in public statements.<sup>61</sup> But in June 2019, President Bukele dissolved the Secretariat of Social Inclusion, within which the directorate on sexual diversity was based, and subsumed the directorate into an existing Gender Unit in the Ministry of Culture, renamed the Gender and Diversity Unit. LGBT activists criticized the move,

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<sup>57</sup> Republic of El Salvador, Código Penal (Penal Code), [https://www.oas.org/dil/esp/Codigo\\_Penal\\_El\\_Salvador.pdf](https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf), art. 292.

<sup>58</sup> Republic of El Salvador, Attorney General's Office, letter addressed to Human Rights Watch, September 30, 2020, DFG-116/2020; see Annex II.

<sup>59</sup> Republic of El Salvador, Executive Branch, Decree No. 56 (Órgano Ejecutivo, Decreto No. 56), undated, [ilo.org/dyn/natlex/docs/ELECTRONIC/86392/97471/F1174021459/SLV86392.pdf](http://ilo.org/dyn/natlex/docs/ELECTRONIC/86392/97471/F1174021459/SLV86392.pdf) (accessed September 11, 2020).

<sup>60</sup> Human Rights Watch interview with Cruz Torres, former director of sexual diversity in the Secretariat of Social Inclusion, San Salvador, April 29, 2019.

<sup>61</sup> Cruz Edgardo Torres Cornejo, "El Salvador Institutional LGBTI Inclusion Index" ("Índice de Inclusión Institucional LGBTI El Salvador," undated, <https://www.transparencia.gob.sv/institutions/capres/documents/238541/download> (accessed September 11, 2020); Ministry of Labor and Social Welfare, "Social Inclusion Secretariat Recognizes MTPS Efforts in Support of the LGBT Community" ("Secretaría de Inclusión Social reconoce labor del MTPS en favor de comunidad LGBTI"), February 7, 2018, <https://www.mtps.gob.sv/noticias/secretaria-inclusion-social-reconoce-labor-del-mtps-favor-comunidad-lgbti> (accessed September 11, 2020).

protesting that few of their grave concerns regarding safety and discrimination could be adequately addressed under the ambit of culture.<sup>62</sup> They have also expressed concern that other government initiatives aimed at promoting LGBT inclusion, have resulted in little or no concrete follow-up, particularly since President Bukele took office, including a set of trainings conducted by the Ministry of Justice and Public Security in 2018 under the banner of a campaign entitled “I’m Doing What’s Right.”<sup>63</sup>

El Salvador’s Ministry of Justice and Public Security tracks crimes against LGBT people, including through an “LGBT” box that can be checked on complaint forms, which ought to provide the state with data to help understand patterns and mitigate such crimes.<sup>64</sup> However, according to an official at the Attorney General’s office, prosecutors are often embarrassed to ask about complainants’ sexual orientation or gender identity, leading to likely undercounting.<sup>65</sup>

In 2015, El Salvador passed a landmark hate crimes bill that increased sentences for homicides and threats based on gender identity and expression and sexual orientation, as well as race, ethnicity, religion, gender and political affiliation, although the statute does not extend to other crimes, such as assault and rape.<sup>66</sup> But in the intervening five years,

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<sup>62</sup> Oscar Lopez, “Pressure Mounts for El Salvador to Investigate Wave of LGBT+ Killings,” *Reuters*, November 21, 2019, <https://www.reuters.com/article/us-el-salvador-lgbt-murder-trfn/pressure-mounts-for-el-salvador-to-investigate-wave-of-lgbt-killings-idUSKBN1XWo1G> (accessed September 11, 2020); Valeria Guzmán, “LGBTI Federation Questions the New Government’s Abandonment of Sexual Diversity” (“Federación LGBTI cuestiona el desamparo a la diversidad sexual en el nuevo gobierno”), *El Faro*, November 4, 2019, [https://elfaro.net/es/201911/el\\_salvador/23760/Federaci%C3%B3n-LGBTI-cuestiona-el-desamparo-a-la-diversidad-sexual-en-el-nuevo-gobierno.htm](https://elfaro.net/es/201911/el_salvador/23760/Federaci%C3%B3n-LGBTI-cuestiona-el-desamparo-a-la-diversidad-sexual-en-el-nuevo-gobierno.htm) (accessed September 11, 2020); COMCAVIS Trans, *Flee and Survive: A Look at LGBTI Displaced People in El Salvador and the Risks They Face (Huir y Sobrevivir: Una Mirada a la Situación en El Salvador de las Personas LGBTI Desplazadas Internas y los Riesgos que Enfrentan)*, June 2020, p. 9, on file with Human Rights Watch.

<sup>63</sup> “Government of El Salvador Fires LGBTI personnel” (“Gobierno de El Salvador despide a personal LGBTI”), *Agencia Presentes*, September 5, 2019, <https://agenciapresentes.org/2019/09/05/gobierno-de-el-salvador-despide-personal-lgbti-y-retrocede-en-derechos-laborales> (accessed September 11, 2020); Ernesto Valle, “El Salvador Government Ministry Implements Pro-LGBTI Policies,” *Washington Blade*, November 19, 2018, <https://www.washingtonblade.com/2018/11/19/el-salvador-government-ministry-implements-lgbti-policies> (accessed September 11, 2020); Human Rights Watch telephone interview with Aldo Peña, representative of Hombres Trans El Salvador, August 5, 2020.

<sup>64</sup> Mariana Arévalo, “LGBT Community Included for the First Time in an Official Report on Violence” (“Incluyen por primera vez a comunidad LGBTI en un informe oficial sobre violencia”), *La Prensa Gráfica* (San Salvador), December 14, 2019, <https://www.laprensagrafica.com/elsalvador/Incluyen-por-primera-vez-a-comunidad-LGBTI-en-un-informe--oficial-sobre-violencia-20191213-0800.html> (accessed September 11, 2020).

<sup>65</sup> Human Rights Watch interview with Marina de Ortega, director for women, children, adolescents, LGBTI people and other vulnerable groups at the Attorney General’s office, San Salvador, May 2, 2019.

<sup>66</sup> Republic of El Salvador, Legislative Decree 106 of 2015 (Decreto Legislativo No. 106 de fecha 03 de septiembre de 2015), <http://www.jurisprudencia.gob.sv/busqueda/showExtractos.php?bd=2&nota=732213&doc=558819&&singlePage=false> (accessed September 11, 2020). The reform increases the maximum sentences for homicide, to 30 to 50 years if committed by an ordinary citizen and 40 to 70 years if committed by a public official, if a murder is ruled to be a hate crime.

prosecutors have only filed hate crimes charges three times based on gender identity, and never based on sexual orientation. In the 2020 Camila Díaz Córdova murder trial, a judge dismissed the hate crimes charges, apparently as a result of insufficient evidence.<sup>67</sup> Two other cases remained pending at time of writing.<sup>68</sup>

El Salvador's Human Rights Ombudsperson's Office (*Procuraduría para la Defensa de los Derechos Humanos*, PDDH), an autonomous body with the government that receives human rights complaints, refers cases to other government agencies and can call for them to take steps to address human rights abuses, has received a number of complaints from victims of anti-LGBT discrimination and violence. In May 2019, the PDDH published a report on 19 unsolved murders of LGBT people, primarily trans women, that it had been able to document between 2009 and 2016. The report assailed both police and prosecutors' failure to assiduously investigate and prosecute anti-LGBT hate crimes.<sup>69</sup>

While some branches of government have attempted to address anti-LGBT violence and discrimination, they have not taken one of the steps that could reduce such violations: passing a law that allows transgender people to change their name and gender identity on official documents through a simple, administrative process.<sup>70</sup> The discrepancy between gender identity and official documentation is a source of discrimination and humiliation for trans people, as well as a source of conflict with authorities. For instance, when Maria I., a trans woman, attempted to renew her identity card in 2010, an official at the DUI

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<sup>67</sup> Cristian González Cabrera (Human Rights Watch), "Justice for LGBT Salvadorans Requires Reckoning with Hate," commentary, *La Prensa Gráfica*, April 11, 2020, <https://www.hrw.org/news/2020/04/11/justice-lgbt-salvadorans-requires-reckoning-hate>.

<sup>68</sup> Nahomy Alexandra, a trans girl who officials at the Human Rights Ombudsperson's Office said was between 15 and 17 years old, was found strangled in the back of a car in November 2018. The case remains pending, as does a case involving the murder of a trans woman, Tita Andrade, in March 2020. Human Rights Watch interview with Carlos Rodriguez, assistant prosecutor for individual rights, Human Rights Ombudsperson's Office, San Salvador, July 24, 2019; Human Rights Watch email correspondence with Jessica Torres de Cruz, Human Rights Ombudsperson's Office, June 19, 2020.

<sup>69</sup> Procuraduría para la Defensa de los Derechos Humanos, "First Situational Report on Hate Crimes Against the LGBTI Population" ("Primer Informe Situacional sobre Crímenes de Odio Cometidos en Contra de la Población LGBTI"), May 2019, <https://www.pddh.gob.sv/portal/wp-content/uploads/2019/05/primer-informe-crimenes-de-odio.pdf> (accessed September 11, 2020).

<sup>70</sup> Other countries and jurisdictions have passed laws that allow name and gender reaffirmation in a simple, inexpensive manner, including Argentina, Colombia and Mexico City. Daniel Bezowsky Ramirez (Human Rights Watch), "Latin America Could Lead the Way for LGBT Rights in 2018," commentary, *Proceso*, February 6, 2018, <https://www.hrw.org/news/2018/02/06/latin-america-could-lead-way-lgbt-rights-2018>.

(identity document) center in Ciudad Delgado, San Salvador, refused to take her photo unless she came back dressed in men’s clothing and without makeup on.<sup>71</sup>

In 2018, Congressmember Lorena Peña presented a gender identity bill, drafted in collaboration with trans organizations.<sup>72</sup> The bill was discussed by the parliamentary commission on women and gender equality in May 2019, but has not advanced to a full parliamentary debate.<sup>73</sup> In at least two cases, judges have allowed transgender people to legally change their name and sex, but only after lengthy court proceedings and on the basis that they had undergone sex reassignment surgery.<sup>74</sup> Erika Q., a 39-year-old trans woman from San Salvador, said:

I don’t know why governments make it so complicated for people to have names that they are comfortable with. It’s unjust that they are denying something that could change the lives of so many people. It’s something primordial in one’s life—it is how you feel respected. If they approve the gender law, trans people will have a different way of thinking, ‘there’s a law that validates me.’<sup>75</sup>

El Salvador has legislated attempts to address violence against women, although they have had limited success in stemming violence.<sup>76</sup> The Special Comprehensive Law for a

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<sup>71</sup> Human Rights Watch telephone interview with Maria I., June 25, 2020; Duicentro de Ciudad Delgado, “Procedure Suspension Act” (“Acta de Suspension de Tramite”), November 30, 2010, on file with Human Rights Watch.

<sup>72</sup> FMLN Parliamentary Group, *Draft Gender Identity Law (Anteproyecto de Ley de Identidad de Género)*, March 22, 2018, <https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/C28A646B-453C-48EB-A98F-55E1F6E47C6B.pdf> (accessed September 11, 2020).

<sup>73</sup> Marilú Alvarenga, “Draft Gender Identity Law Studied” (“A estudio anteproyecto de Ley de Identidad de Género”), Legislative Assembly of El Salvador, March 13, 2019, <https://www.asamblea.gob.sv/node/8874> (accessed September 11, 2020).

<sup>74</sup> OAS, *Panorama of the Legal Recognition of Gender Identity in the Americas (Panorama del reconocimiento legal de la identidad de género en las Américas)*, June 2020, <http://clarcienv.com/identidaddegenero/public/files/PANORAMA%20DEL%20RECONOCIMIENTO%20LEGAL%20DE%20LA%20IDENTIDAD%20DE%20GENERO%20EN%20LAS%20AMERICAS.pdf> (accessed September 11, 2020), p. 41; “Zacatecoluca Judge Authorizes Name Change for Trans Woman,” *El Mundo*, April 30, 2019, <https://diario.elmundo.sv/juzgado-de-zacatecoluca-autoriza-cambio-de-nombre-a-mujer-trans> (accessed September 11, 2020).

<sup>75</sup> Human Rights Watch interview with Erika Q., Washington, D.C., December 5, 2019.

<sup>76</sup> Ciara Nugent, “Violence Against Women in El Salvador Is Driving Them to Suicide — Or to the U.S. Border,” *Time*, May 14, 2019, <https://time.com/5582894/gender-violence-women-el-salvador> (accessed September 11, 2020); Jo Griffin, “‘Police Never Turned Up’: El Salvador’s Devastating Epidemic of Femicide,” *Guardian*, June 8, 2018, <https://www.theguardian.com/global-development/2018/jun/06/el-salvador-devastating-epidemic-femicide> (accessed September 11, 2020).

Life Free of Violence for Women, passed in 2011, establishes severe penalties for femicide, defined as the murder of a woman when motivated by “hatred or contempt for her status as a woman,” but it does not alter sentences for other forms of physical and sexual violence against women. It prohibits discrimination in its application, including on the grounds of “sexual identity.”<sup>77</sup> It is unclear whether the definition of “women” under the law is intended to be inclusive of trans women.

In 2017, El Salvador established specialized courts for violence against women in San Salvador.<sup>78</sup> These courts have jurisdiction over femicide and a number of other crimes included under the Special Comprehensive Law, including obstructing access to justice. They also have jurisdiction over crimes covered by the penal code, including article 246, which criminalizes employment discrimination (on grounds of sex, but not explicitly addressing sexual orientation or gender identity) and article 292, which criminalizes discrimination by government officials on the grounds of “nationality, sex, race, religion, or any other condition of a person.”<sup>79</sup> Because transgender women are not legally recognized as women, it is not clear that they can benefit from these courts. Even lesbians may face exclusion: Andrea Ayala, an activist with the organization ESMULES (*Espacio Mujeres Lesbianas Salvadoreñas por la Diversidad*, Salvadoran Lesbian Women’s Space for Diversity), said that in two cases in which ESMULES tried to help victims obtain recourse—one involving domestic violence and the other involving employment discrimination—officials at the court for violence against women said they did not have jurisdiction over the cases because the women were lesbians.<sup>80</sup>

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<sup>77</sup> Legislative Assembly of the Republic of El Salvador, Decree No. 520 of 2011, *Special Comprehensive Law for a Life Free of Violence for Women (Ley Especial Integral Para Una Vida Libre de Violencia Para Las Mujeres)*, [https://oig.cepal.org/sites/default/files/2011\\_decreto520\\_elsvd.pdf](https://oig.cepal.org/sites/default/files/2011_decreto520_elsvd.pdf) (accessed September 16, 2020).

<sup>78</sup> Legislative Assembly of the Republic of El Salvador, Decree No. 286 of 2016, *Decreto para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres*, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2010-2019/2016/04/B7837.PDF> (accessed September 11, 2020); Unidad de Género, Corte Suprema de Justicia, “Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres,” *Boletín de Género*, No. 4, July 2017, [http://www.csj.gob.sv/Comunicaciones/2017/07\\_JULIO/BOLETINES/19.07.17%20BOLETIN%20G%C3%89NERO.pdf](http://www.csj.gob.sv/Comunicaciones/2017/07_JULIO/BOLETINES/19.07.17%20BOLETIN%20G%C3%89NERO.pdf) (accessed September 11, 2020).

<sup>79</sup> Republic of El Salvador, Código Penal (Penal Code), [https://www.oas.org/dil/esp/Codigo\\_Penal\\_EL\\_Salvador.pdf](https://www.oas.org/dil/esp/Codigo_Penal_EL_Salvador.pdf), arts. 245-246, 292.

<sup>80</sup> Human Rights Watch telephone interview with Andrea Ayala, founder of ESMULES, April 19, 2019.

## *Social Stigma*

Violence and discrimination take place in a context of family rejection and social stigma that have a negative impact on the well-being of LGBT people. Despite some progress in attitudes toward LGBT people in El Salvador, social stigma remains pervasive.

Those interviewed by Human Rights Watch described churches and families as significant sources of stigma. Erika Q., a 39-year-old trans woman from San Salvador, emphasized the influence of churches on social norms in a country embattled by insecurity and weak rule of law:

You're insulted on a daily basis. Much of this comes from the churches, where verbal harassment is constant. It's the churches that have the power. I have nothing against churches, but they are the source of much anti-LGBT discrimination and hate. People don't feel protected by the police or the government, but they feel protected by religion. But some churches use this against us. They focus on us as part of the problem.<sup>81</sup>

In some cases, churches practice conversion therapy, attempting to change people's gender identity or sexual orientation. Ricardo S., a 28-year-old gay man, described an experience at a church youth retreat when he was 17:

They threw me on the ground, held me down, and put a crucifix on my penis and another one on my buttocks, and the priest shouted, 'I order this demon to leave your body!' Then, a spiritual guide came [to San Salvador] from Sonsonate who continued to follow my case. They obliged me to dress differently and said that if I felt like I wanted to fall in love with a man, that I had to start praying hard. I thought I was possessed by a demon of homosexuality. That lasted for three years.<sup>82</sup>

Octavio M., a 25-year-old trans man, was subjected to conversion therapy, in his case in a mental health setting, by personnel at the Christian-affiliated orphanage where he was raised:

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<sup>81</sup> Human Rights Watch interview with Erika Q., Washington, D.C., December 5, 2019.

<sup>82</sup> Human Rights Watch interview with Ricardo S., San Salvador, April 30, 2019.

When I was between 15 and 17 years old, they made me go to a psychologist. We did exercises, I had to draw things. And they had dolls that represented a family and said that a man couldn't be with a man, and a woman couldn't be with a woman. Eventually I told them the things I thought they wanted to hear.<sup>83</sup>

Cruz Torres, then-director of sexual diversity in the Secretariat of Social Inclusion, told Human Rights Watch that churches were the source of a vocal campaign against so-called gender ideology, a catch-all term that religious fundamentalists and others use to refer to a supposed gay and feminist-led movement to subvert traditional families and social values.<sup>84</sup>

Many trans women interviewed by Human Rights Watch survived by doing sex work, and their work exposed them to particularly high levels of social stigma. Serafina N., a trans sex worker based in the Hospital Benjamin Bloom area of San Salvador, said people in passing cars frequently threw trash, stones, and mangoes at sex workers in the area.<sup>85</sup>

Interviewees said social rejection, family rejection and bullying contributed to depression, including suicidal ideation. Xavier H., a trans man, described becoming aware of his gender identity as a boy at age three. The severe bullying he endured, he said, led him to attempt suicide at age six.<sup>86</sup> Two other trans men and a trans woman interviewed by Human Rights Watch in El Salvador also said that they had seriously considered or attempted suicide.<sup>87</sup>

## Violence Against LGBT People in El Salvador

“My life has never been happy,” Maria I., a trans woman in San Salvador told Human Rights Watch. “My mother died in the earthquake in 1986. My father didn't want me and left me with my grandmother. The first time I was raped, I was nine.” At age nine, Maria would have been perceived as a young boy. A stranger plied her with a toy doll—“first he

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<sup>83</sup> Human Rights Watch interview with Octavio M. (pseudonym), San Salvador, May 3, 2019.

<sup>84</sup> Human Rights Watch interview with Cruz Torres, San Salvador, April 29, 2019.

<sup>85</sup> Human Rights Watch interview with Serafina N. (pseudonym), San Salvador, July 13, 2019.

<sup>86</sup> Human Rights Watch interview with Xavier H., San Salvador, May 3, 2019.

<sup>87</sup> Human Rights Watch interviews with Alek D., San Salvador, May 3, 2019; Navas F., San Salvador, July 24, 2019; and Laura I., San Salvador, July 24, 2019.

tried to give me a ball, but I didn't like it"—and then pushed her into a bathroom and raped her while her grandmother was out buying food. Maria, who described herself as “pretty, and feminine,” threw out her bloody underwear, thinking her grandmother would blame her. She did not tell anyone. At age 14, Maria left home due to her grandmother's rejection of her transgender identity. On the streets, she was raped again.<sup>88</sup>

Maria was raped again as an adult, this time by gang members, in 2015. By then, El Salvador had on the books its hate crimes law, with harsh penalties for violence based on sexual orientation and gender identity. It had established institutions like the Sexual Diversity Directorate, which opened their doors to people needing services like Maria, a trans woman who sometimes did sex work to survive. Still, to Maria's knowledge, despite her filing a complaint, no one was ever arrested for the assault.

The Salvadoran government acknowledges the violence and discrimination that confront LGBT Salvadorans. The Attorney General's office in El Salvador released statistics in January 2020 indicating it had tabulated 692 cases of violence against LGBT and intersex people in five years.<sup>89</sup> Importantly, the government has also acknowledged violations at the hands of security officials. A 2017 Ministry of Justice and Public Security report minced no words:

It cannot be denied that the country is marked by high levels of violence and criminality, which, in addition to generating restrictions on people's freedom, also violates fundamental rights such as the right to life and physical integrity. In general terms, the country presents high levels of social exclusion and vulnerability, within which cultural practices reproduce violence and discrimination.

One of the populations that are most affected by this situation is that composed of LGBTI people, who, in addition to suffering from widespread discrimination, also face multiple forms of violence, including acts of

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<sup>88</sup> Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

<sup>89</sup> Eduardo Sosa, “Prosecutor's Office Reports 692 Cases of Violence Against the LGBTI Population in Five Years” (“Fiscalía reporta 692 casos de violencia contra población LGTBI en cinco años”), ElSalvador.com, January 2, 2020, <https://www.elsalvador.com/eldiariodehoy/fiscalia-reporta-692-casos-de-violencia-contra-poblacion-lgbti-en-cinco-anos/673637/2020> (accessed September 11, 2020).



torture, inhuman or degrading treatment, excessive use of force, illegal and arbitrary arrests and other forms of abuse, much of it committed by public security agents.<sup>90</sup>

UNHCR's 2016 guidelines for asylum applications of Salvadorans stated that LGBT people have "consistently been targeted for attacks and murder by the gangs and other sectors of society, including by the police and other public authorities" and that El Salvador's gangs have demonstrated "virulent hatred and ill-treatment of persons based on of their perceived sexual orientation and/or gender identity," particularly against trans women.<sup>91</sup> The Inter-American Commission on Human Rights reported similar concerns.<sup>92</sup>

As seen above, several policy initiatives suggest good will on the part of government institutions to make policy inclusive of people of diverse gender identities and sexual orientations. But for many LGBT people, daily life on the streets is controlled not by the state but by criminal gangs, including the two factions of the 18th Street Gang, or Barrio 18, and Mara Salvatrucha 13, or MS-13. LGBT people, especially trans women, face violence at the hands of gangs that can be motivated by anti-LGBT animus or opportunism related to LGBT people's perceived or actual social and economic vulnerability. LGBT people also face violence from the police, and activists have pointed out that putting more police on the streets—a key feature of the Bukele administration's approach to crime—is not necessarily beneficial for LGBT people.<sup>93</sup> The case of Camila Díaz Córdova, in which three police officers have been accused of killing a trans woman in January 2019, discussed below, is illustrative of the various forms of violence and discrimination LGBT people experience.

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<sup>90</sup> Ministry of Justice and Public Security, Ministry of Justice and Public Security Policy Regarding the LGBT Population (Política deL Ministerio De Justicia Y Seguridad Pública Para la Atención de la Población LGBT), December 2017 (on file with Human Rights Watch), p. 9.

<sup>91</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, HCR/EG/SLV/16/01, March 2016, <https://www.refworld.org/pdfid/56e706e94.pdf> (accessed September 11, 2020), pp. 38-39.

<sup>92</sup> Inter-American Commission on Human Rights, *Violence against LGBTI persons*, OAS/Ser.L/V/II.rev.1, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>, para. 279.

<sup>93</sup> Carmen Valeria Escobar, "For LGBTI People the Territorial Control Plan Doesn't Exist: Bianka Rodríguez" ("Para las personas LGBTI no existe el Plan Control Territorial: Bianka Rodríguez"), *Gato Encerrado*, December 13, 2019, <https://gatoencerrado.news/2019/12/13/para-las-personas-lgbti-no-existe-el-plan-control-territorial-bianka-rodriguez> (accessed September 11, 2020).

Between October 2019 and March 2020, at least seven transgender women and one gay man were murdered in El Salvador.<sup>94</sup> Several cases bore clear indications of being anti-LGBT hate crimes.<sup>95</sup> Relentless violence, and threat of violence, cause many trans people, and in some cases lesbian, gay, and bisexual people, to live on the run. In 2019, the transgender rights organization COMCAVIS Trans reported having assisted 84 people who suffered internal displacement due to their sexual orientation or gender identity.<sup>96</sup>

According to COMCAVIS, most fled their homes because of threats from gangs or because of attempted murder based on their gender identity or sexual orientation.<sup>97</sup>

### *Domestic Violence*

For too many LGBT people in El Salvador, violence begins at home, sometimes from a very young age, especially for those who breach gender norms.

Michelle S., a 25-year-old trans woman who grew up on a ranch in Zacatecoluca municipality, La Paz department, told Human Rights Watch that she was severely beaten by her father from when she was five or six years old. Michelle said:

My father beat me because of the way I walked. It got to the point that he hung me by my feet from the ceiling, for up to an hour. He did this many times. He hit me with ropes that he'd run through sand to make it hurt more. He also hit me with a rubber whip, the kind you use to hit horses....

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<sup>94</sup> The women's names are Anahy Miranda Rivas, Jade Camila Díaz, Victoria Pineda, D. Rosa Granados, Cristi Conde Vásquez, Briyit Michelle Alas, and Tita. Cristian González Cabrera, "Murder Trial for El Salvador Transgender Woman to Proceed," Human Rights Watch dispatch, March 11, 2020, <https://www.hrw.org/news/2020/03/11/murder-trial-el-salvador-transgender-woman-proceed>; Paula Rosales, "Gay Youth Murdered: Two Hate Crimes Against LGBTI+ People in One Week in El Salvador" ("Asesinan a joven gay: dos crímenes de odio a LGBTI+ en una semana en El Salvador"), *Presentes*, March 20, 2020, <http://agenciapresentes.org/2020/03/20/asesinan-a-joven-gay-dos-crimenes-de-odio-a-lgbti-en-una-semana-en-el-salvador> (accessed September 11, 2020).

<sup>95</sup> Cristian González Cabrera (Human Rights Watch), "Justice for LGBT Salvadorans Requires Reckoning with Hate," commentary, *La Prensa Gráfica*, <https://www.hrw.org/news/2020/04/11/justice-lgbt-salvadorans-requires-reckoning-hate>. Pineda was found naked with her face disfigured and covered in logs and a car tire in an apparent enactment of crucifixion while Andrade was found 90 percent burned. Such symbolic and brutal murders are often committed against people accused of "moral crimes."

<sup>96</sup> COMCAVIS Trans, *Huir y Sobrevivir*, p. 9.

<sup>97</sup> Brot fur die Welt (Bread for the World), *What El Salvador Does Not Recognize: Report on Cases of Forced Displacement due to Violence 2017-2018 (Lo que El Salvador no reconoce: Informe de las Organizaciones de la Sociedad Civil sobre los Casos de Desplazamiento Forzado por Violencia 2017-2018)*, July 11, 2019, <https://www.fespad.org.sv/lo-que-el-salvador-no-reconoce-informe-de-las-organizaciones-de-la-sociedad-civil-sobre-los-casos-de-desplazamiento-forzado-por-violencia-2017-2018> (accessed September 11, 2020), p. 28.

When he would beat me, he would tell me that he wished I had never been born, that I was an embarrassment. He never beat my siblings.<sup>98</sup>

The beatings worsened when Michelle was 11 or 12 years old:

I had a friend who was like me, and a friend of my father's told him 'Your son is going around with another faggot,' and he beat me on the legs. The teacher saw [the marks] and called the police. Police came to the school, and they brought me home and spoke to him. They knew my father. They didn't do anything, because of their friendship with him and because he was a sergeant in the army.<sup>99</sup>

Michelle's father's response was to tie her to the gate to prevent her from running away to her grandmother's house. Twice, Michelle said, her father hit her so hard that she vomited blood and had to seek medical treatment. Michelle told Human Rights Watch researchers that she told doctors she had fallen down, fearing that if she told the truth, her father would beat her again. At around this time, reacting to the violence, Michelle began to cut herself. She eventually fled home at age 15 and turned to sex work for survival, leading to further vulnerability to violence, as discussed further below.<sup>100</sup>

Maria I., a trans woman San Salvador, described being beaten by an uncle as a child:

An uncle lived with us. He was a biker [motorcyclist] and was really machista, and humiliated me. When he saw changes in me, for instance when I grew my hair longer and powdered my face, he beat me.<sup>101</sup>

Laura I., a 27-year-old trans woman, said that when she was 13 and started to develop a feminine gender expression, her father threatened to kill her:

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<sup>98</sup> Human Rights Watch interview with Michelle S., Washington, D.C., December 6, 2019.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

My father always treated me badly. I still hadn't told him about my gender expression [identity], but I think he already had a sense of my expression. At the end of 2005 [my father] said: 'If you turn out to be a faggot I'll beat the shit out of you and kill you.'<sup>102</sup>

At age 15, Laura came out to her father as trans. He did not beat her, but tried to force her to have sex with a female sex worker, telling her it was "so you are made into a man." Laura told Human Rights Watch she still felt traumatized by this incident years later.<sup>103</sup>

Navas F., a trans man, said his family members beat him when he first had a relationship with a woman, around ninth grade. His aunt took him for an exorcism with a woman considered to be a witch. Navas said his inability to "change" and his family's refusal to accept him led to a deep depression and a suicide attempt.<sup>104</sup>

### *Violence and Harassment by State Security Forces*

Maria I., a trans woman from San Salvador, was living in fear when Human Rights Watch interviewed her in July 2019. Maria's best friend, Camila Aurora Díaz Cordoba, had been murdered in January. Three police officers had been arrested and charged with Camila Díaz's murder earlier in July. Maria was afraid that they had not acted alone, and that other police officers could be coming for her.<sup>105</sup>

Maria I. told Human Rights Watch about Díaz's life, and about her death at 29 years old. According to Maria I., Díaz moved to San Salvador at age 17, escaping a family that rejected her gender identity and tried to "change" her by enrolling her in a military institution. Díaz started doing sex work to make a living, and befriended Maria I. The two women fled to Mexico together in March 2016, escaping from a violent environment in which gang members had murdered their close friend, Mónica, had raped Maria, and had threatened Camila. But they found life in Mexico dangerous and economically unsustainable, and they returned to El Salvador. Díaz fled again in 2017, this time reaching the United States and turning herself in to immigration authorities in August. But in

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<sup>102</sup> Human Rights Watch interview with Laura I., San Salvador, July 24, 2019.

<sup>103</sup> Ibid.

<sup>104</sup> Human Rights Watch interview with Navas F., San Salvador, July 24, 2019.

<sup>105</sup> Human Rights Watch interview with Maria I. (pseudonym), location withheld, July 18, 2019.

November, she was deported back to El Salvador. She returned to sex work. Fourteen months later, she was dead.

In July 2020, three police officers were convicted of Díaz's murder.<sup>106</sup> According to prosecutors, they picked up Díaz at around 3 a.m. on January 31 after receiving reports of someone creating a disturbance in the street. They handcuffed her, placed her face down in the back of a police pickup truck, and severely beat her before throwing her out of the moving vehicle.<sup>107</sup> Díaz died at Rosales Hospital on February 3, 2019.

It is remarkable in El Salvador to see a conviction for the murder of a trans woman, and police records indicate that international pressure played a significant role in advancing investigations.<sup>108</sup> But it is unremarkable for trans people, and in some cases other sexual minorities, to experience serious violence at the hands of the security forces.

Pricila P., a trans woman from San Salvador, recounted how in February 2018, on her way home from work in the evening, four police officers assaulted her after a "routine stop" in which they required all men to alight from a public minibus and searched them for drugs:

When everyone else got back in, they didn't let me, they told the driver to go on. They asked me if I was gay, and I said, 'Yes,' because I never liked to hide that. They said, 'You don't understand that you are a man?'

One of the police officers grabbed my testicles and squeezed. I said to let go. He said, 'You're realizing you're a man because you feel pain. If you were a woman you wouldn't feel pain.' The pain threw me to the floor. One of them stepped on my hand with his boot. He said that I would become a man by force. They beat me, and they left me there.

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<sup>106</sup> "El Salvador: Police Officers Convicted for Transgender Murder," Human Rights Watch news release, July 31, 2020, <https://www.hrw.org/news/2020/07/31/el-salvador-police-officers-convicted-transgender-murder>.

<sup>107</sup> Cristian González Cabrera, "Murder Trial for El Salvador Transgender Woman to Proceed," Human Rights Watch dispatch, <https://www.hrw.org/news/2020/03/11/murder-trial-el-salvador-transgender-woman-proceed>.

<sup>108</sup> A Human Rights Watch researcher viewed the case file, which included a document in which a police investigative body urgently requested information about the case from another organ, citing "international pressure."

I arrived at home, bathed, and changed. I realized I couldn't feel safe with the police in my country.<sup>109</sup>

An activist from a trans rights organization accompanied Pricila P. to the central police station to file a complaint, but the police refused to accept it, she said:

They saw we were people from the [LGBT] community. The man at the reception said that if it was mistreatment of a gay, there was no point in filing a complaint. He said it was my fault, that maybe I had disrespected the police, that I deserved this... We had to give up and go home. I remember that [the activist] said 'That's why there are so, so many deaths.'<sup>110</sup>

In November 2018, a police patrol stopped Pricila P. as she was coming home in the early morning, wearing makeup. Police officers asked, "Why are you like this? You're a man," and threw a bottle of water in her face, she said. They grabbed her purse which contained her antiretroviral medication. According to Pricila P.:

I said not to take it because it was medicine that I had to take daily. They realized it was for HIV, and they said, 'Oh, you're going to die.... you don't need this, you're already approaching death.'<sup>111</sup>

Pricila P. went without antiretroviral therapy for two months after the incident: it was difficult to get an appointment to get her prescription refilled, and the hospital was in a neighborhood controlled by a rival gang, dangerous for residents of MS-13-controlled neighborhoods. She told Human Rights Watch: "My health deteriorated, the virus became detectable, from not taking my medicine for two months."<sup>112</sup>

Aldo Peña, a 35-year-old trans man, was the only person interviewed by Human Rights Watch who successfully brought charges against state security agents for anti-LGBT

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<sup>109</sup> Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

violence. Peña was on a bus returning home from the LGBT pride march in San Salvador on June 27, 2015, when he got into a verbal altercation with the driver, who had skipped his stop. The driver ordered Peña and his friend off the bus, dropping them off in front of three police officers, whom Peña recognized as officers who had harassed him in the neighborhood in the past, demanding to see his ID and deriding him for being transgender.<sup>113</sup>

Peña said one police officer grabbed him by the shirt, causing Peña to respond, “I’m not a criminal.” The police officers started beating both Peña and his female friend, the beating worsening when Peña asked why they were beating her. Peña said police knocked him to the ground, jumped on him, and hit him with a gun, causing him to briefly lose consciousness. When he awoke, he said, he was handcuffed and on his stomach on the ground.<sup>114</sup>

Police took Peña and his friend to the nearby station, where he could hear her screams as she was beaten with a belt. According to Peña, police shouted at him, “You’re always going around with that dyke!” The police hit Peña, jumping on him, he said, “as if I was a trampoline... One officer said, ‘Come touch this son of bitch and see what he is.’”<sup>115</sup> About twelve police officers were beating him. Peña said:

They told me that I was going to wake up in a ditch, and that they would say it was the gangs. [They said:] ‘If you’re a man, you can take it.’ I thought it was my last day to live.<sup>116</sup>

Activists from LGBT organizations including Entre Amigos and Comcavis Trans mobilized national and international attention to Aldo Peña’s case, attracting support from people including then-mayor of San Salvador Nayib Bukele—the current president—and then-First Lady Margarita Villalta de Sánchez, eventually resulting in Peña’s release.<sup>117</sup> After hospitalization for his injuries, Peña filed a complaint against the police officers, which

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<sup>113</sup> Human Rights Watch interview with Aldo Peña., San Salvador, May 3, 2019, and by telephone, April 10, 2020.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Mitch Kellaway, “Salvadoran Trans Man Says He Was Brutalized by Police After Pride Parade,” *Advocate*, July 14, 2015, <https://www.advocate.com/violence/2015/07/14/salvadoran-trans-man-says-he-was-brutalized-police-after-pride-parade> (accessed September 11, 2020); Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019.

advanced to trial.<sup>118</sup> It was not easy, he said: “The prosecutor in my case was bullied by her peers for being on my case; they told her that it’s the case of a faggot, of a dyke.” The interim pretrial judge was also hostile: “The pretrial judge always referred to me as faggot.” Eventually, Peña obtained a rare outcome in El Salvador: two of the police officers who had attacked him were sentenced to four years in prison.<sup>119</sup>

Peña concluded, “The [police] violence was the worst thing that happened to me. I’m lucky to still be alive.”<sup>120</sup>

Maria I.’s experience, on the other hand, demonstrates why few trans victims of police violence bother to file complaints at all. Maria I., a trans woman living in San Salvador, said that in 2016 a friend was dropping her off at home when police stopped the friend’s car at a checkpoint. Maria recounted:

They were asking for my friend’s documentation, normal things, and then they asked where she was going. She said, ‘I’m going to drop off my *amiga* [female friend].’ One of the police looked in the window at me and said, ‘Ah, but this thing is not a woman.’ They made me get out of the car and wanted to make me strip in the street to see if I was a woman. I refused, and said ‘You’re violating my rights.’ He said to me ‘Your rights, to me, are in the garbage.’ They asked for my ID and I said I didn’t have it. They said if I didn’t have my ID it was probably because I was a criminal, and they started taking pictures of me, saying they were going to put them on the internet to see if I had committed some crime. I felt powerless, they in their uniform are the authority.<sup>121</sup>

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<sup>118</sup> The trial is described by journalists who attended it. Maria Luz Nóchez, Nelson Rauda Zablah and Jimmy Alvarado, “The Invisible Deaths of Trans Women and Men” (“Las muertes invisibles de las mujeres y los hombres trans”), *El Faro*, January 25, 2016, [https://www.elfaro.net/es/201601/el\\_salvador/17819/Las-muertes-invisibles-de-las-mujeres-y-los-hombres-trans.htm](https://www.elfaro.net/es/201601/el_salvador/17819/Las-muertes-invisibles-de-las-mujeres-y-los-hombres-trans.htm) (accessed September 11, 2020).

<sup>119</sup> Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019, and by telephone, April 10, 2020; Nelson Rauda Zablah, “Court Acquits Principal Defendant in Beating of Transsexual CAM Agent” (“Justicia absuelve a principal acusado de golpiza al agente del CAM transsexual”), *El Faro*, October 9, 2016, [https://www.elfaro.net/es/201610/el\\_salvador/19373/Justicia-absuelve-a-principal-acusado-de-golpiza-al-agente-del-CAM-transsexual.htm](https://www.elfaro.net/es/201610/el_salvador/19373/Justicia-absuelve-a-principal-acusado-de-golpiza-al-agente-del-CAM-transsexual.htm) (accessed September 11, 2020).

<sup>120</sup> Human Rights Watch interview with Aldo Peña, San Salvador, May 3, 2019.

<sup>121</sup> Human Rights Watch telephone interview with Maria I., June 25, 2020.



Since the driver of the car did not have her papers, Maria said she asked police, “On what basis are you going to fine me?” Instead of responding, she said, “They kicked me.”<sup>122</sup>

Maria I. spoke with a friend who encouraged her to file a complaint.

Two days later I went to the police to file a report, [but] the person who was going to register my report told me that it was better not to file a report because it was against police officers. ‘We are the law and you can’t file a complaint against the law. We can’t accept your report.’ And he said to another person there, ‘Can you believe that this gentleman came to file a complaint against [our] comrades? And they started to make fun of me, they were laughing. So I said that I was going to look for help elsewhere, that I would go to the human rights office to file a report, and that I would file one against them at the same time because they wouldn’t take my report. And they said: ‘I wipe my ass with your rights.’<sup>123</sup>

Maria also filed a complaint with the Human Rights Ombudsperson’s Office, but she said that to her knowledge there was no follow-up. She said, “The hardest thing was filing a complaint, because I knew it exposed me to more danger.”<sup>124</sup>

Police abuse of authority was not limited to beatings. In the case of Yadira Q., a trans woman, police used their power to extort sex, a form of sexual assault. Yadira Q. said that in November 2017 she was sitting with a group of trans and cisgender friends in an outdoor area when four male police officers approached them, searched them all, and found one person in possession of marijuana. The police officers pulled aside three trans women in the group and asked them to get into the police vehicle. They drove them to a remote area, where they said they could detain the entire group of friends for “association” with the man who had marijuana, or that the trans women could provide them with oral sex as a “solution.” Fearing arrest, Yadira and her two friends complied.<sup>125</sup>

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<sup>122</sup> Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

<sup>123</sup> Ibid.

<sup>124</sup> As part of the complaint, Maria authorized the sharing of her case with the oversight division within the police, which she understood to be risky. She never heard from the police. Human Rights Watch telephone interview with Maria I., June 25, 2020. A copy of the complaint is on file with Human Rights Watch.

<sup>125</sup> Human Rights Watch interview with Yadira Q. (pseudonym), La Union, July 19, 2019.

Others described threats, harassment, and discrimination from the police. Mario L., a 26-year-old gay man, said police threatened him in January 2018 when he was standing in the street with his boyfriend.

A few police officers came up to us and asked what we were doing. We said that we were just talking. They said that someone called them [to say] that we were engaged in immoral acts. There were four police officers.... They asked if we were gay and we said, yes, but that we hadn't even kissed [on the street].... One started getting annoyed and said, 'To rid them of this, you have to beat the shit out of them.' ... He said: 'Aren't you embarrassed to be doing this? Are you really gay or are you gang members and are trying to brainwash us? Let's see if you can kiss each other to see if it's true.' We didn't do it. And then they said that we were disrespecting them and that we had to get into the [police] car...

My friend who was inside the house came out and asked if they had an order to take us. They told her to stay out of it [and] pointed their gun at her... Then one of the police officers [who had not participated in the intimidation] got in the car to leave, and the others then got in too.<sup>126</sup>

While most cases Human Rights Watch documented of violence and discrimination by security forces involved the police, three cases involved harassment by soldiers.

Nelson V., a 25-year-old trans man, said he was stopped in the street by soldiers looking for a gang member. When they became aware of his gender nonconformity, he said:

They lifted up my t-shirt and said, 'What is this?' I said, 'I'm a trans man.' One of them said, 'Oh, it's a chick. It's a woman. Dyke, you haven't been with a man, once you're with a man that will change you.' I could sense the hatred he felt for me. 'I know dykes and I know faggots, but I don't know people like you.'<sup>127</sup>

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<sup>126</sup> Human Rights Watch interview with Mario L. (pseudonym), San Miguel, July 17, 2019.

<sup>127</sup> Human Rights Watch interview with Nelson V., San Salvador, May 3, 2019.

Angie R., a 36-year-old trans woman in San Salvador, said that on November 8, 2018, two soldiers and a police officer stopped her as she walked home in the evening after attending a soccer game with a friend. They threatened to plant drugs on her if she would not perform oral sex on them. Angie R. refused and threatened to report them. The next day, a cousin who worked in a store near her house told Angie that both police and gang members had come looking for her. Angie R. decided to move out of the home where she lived with her mother and rent a place, fearing violence from both the security forces and the gang members she presumed to be working with them. She filed a report at the Human Rights Ombudsperson's Office, but although officers initiated an investigation, Angie R. was afraid that she might face reprisals, and did not follow up with the complaint.<sup>128</sup> Nearly two years later, Angie had not returned to her mother's home out of fear for her safety, although she struggled to pay the rent.<sup>129</sup>

Mario L., the gay man in San Miguel who was threatened by police for standing in the street with his partner, said that on another occasion, soldiers threatened him because he was wearing an earring. "They told me: if we see you with an earring again, we'll beat you and take the earring out of your ear."<sup>130</sup>

### *Gang Violence*

On numerous occasions, gangs in El Salvador have targeted LGBT people for violence or threats of violence specifically because of their sexual orientation or gender identity.

Ramón L., a 22-year-old gay man, described the murder of a friend in Nuevo Guadalupe in 2015.

Geovanni Francisco Pérez, we called him Geo, was a friend of mine. He was openly gay and he was assassinated because of his sexual orientation.... He had a relationship with a gang member... It was about five years ago, in 2014. As his friends, we told him: this will get you in trouble. The gang members didn't want that someone of them was hanging out with someone

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<sup>128</sup> Human Rights Watch interview with Angie R. (pseudonym), San Salvador, July 13, 2019, and by telephone, August 12, 2020.

<sup>129</sup> Human Rights Watch telephone interview with Angie R., August 12, 2020.

<sup>130</sup> Human Rights Watch interview with Mario L., San Miguel, July 17, 2019.

who's gay. They told him to come to a place and he didn't return home. They found him three days later. There were really horrible pictures in the papers. He was tortured, [it was] terrible... I was really shaken by that image. It made me afraid because he was my friend. I thought that something like that could happen to me too.<sup>131</sup>

Ramón said that Geo's mother did not pursue justice, despite the fact that "everyone knew" which gang members were allegedly involved, because she feared reprisals.<sup>132</sup> Ramón mourned the friend he had lost:

We met in a cybercafé and we liked to play video games together. We played Capture the Fish, Mortal Combat.... He had recently graduated with a psychology degree, he'd gotten a job, he was happy. He was well-known as a softball player.<sup>133</sup>

Maria I., a trans woman from San Salvador, described the loss of one of her best friends, Mónica, in 2011. (The murder of her other best friend, Camila Díaz Córdova, for which police officers have been charged, is recounted above). Maria I. said that in 2006, gangs chased Mónica out of the Montreal neighborhood in San Salvador, where her mother owned a house: "The gang members told her they didn't want to see her there anymore." Maria I. assumed this was because Mónica was trans. In 2011, Mónica told Maria that she was moving back in with her family. Maria I. recounted: "The gang members had chased her away from there, but she said she didn't have money to be renting. I told her no, that it was dangerous."

Mónica returned to Montreal on May 14, Maria recalled. A week later, she was dead. Maria told Human Rights Watch that she heard secondhand from a witness's relative that Mónica

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<sup>131</sup> Human Rights Watch interview with Ramón L., San Miguel, El Salvador, July 17, 2019; see also Carlos Her Cruz, "This is How Trans People are Killed in El Salvador" ("Así asesinan a las personas trans en El Salvador"), *Sin Etiquetas*, July 27, 2015, <https://sinetiquetas.org/2015/07/27/asi-asesinan-a-las-personas-trans-en-el-salvador> (accessed April 11, 2020); "San Miguel: Young Man Found Dead in Nueva Guadalupe" ("San Miguel: Joven es encontrado muerto en Nueva Guadalupe"), *Diario TRV*, July 22, 2015, <https://www.youtube.com/watch?v=w8zdLy9ab3U> (accessed September 11, 2020).

<sup>132</sup> Human Rights Watch interview with Ramón L., San Miguel, July 17, 2019.

<sup>133</sup> *Ibid.*

was shot twice by gang members who said they had warned her to stay away from the neighborhood.<sup>134</sup>

Maria I., too, became a victim of the gangs in Montreal neighborhood, in 2013. She told Human Rights Watch: “The gang members told me: ‘Hey faggot, if you want to live here you have to pay us \$10 a week.’” Maria I. knew sex workers in the neighborhood, both transgender and cisgender, faced extortion, but tried to explain that she was doing domestic work and earning very little.<sup>135</sup> The gang members were unrelenting, telling her she had to pay them in order to live there.<sup>136</sup>

In September 2015, Maria I. was unable to pay for a few weeks. She said:

One night I went out to buy soda and a man appeared at my side and hit me and told me to come with him. There was another man. And they took me to a ravine and down there I saw two others. They told me to walk down the ravine... I said that I wouldn’t go down there, that if they wanted to do something to me that they’d have to do it here. [But] they pushed me and I fell [down the ravine], and they beat and raped me, the four of them. For quite some time, I was afraid that I had caught a disease, because they didn’t use protection.<sup>137</sup>

After raping Maria I., the gang members warned her that she had better continue to pay them or face additional violence. Maria I. filed a police report against her assailants, but to her knowledge, no one was ever arrested.<sup>138</sup>

Sandra C., a 24-year-old lesbian from San Miguel, described how MS-13 members subjected her to threats and extortion after killing her aunt’s husband’s brother, “Luis.” The gang had killed Luis in 2017 because he too was being subjected to extortion, and failed to pay up, Sandra C. said. Sandra’s aunt’s husband confronted MS-13 members

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<sup>134</sup> Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

<sup>135</sup> “Sex Workers Confront Multiple Attacks in the Midst of a Wave of Violence Shaking El Salvador” (“Las trabajadoras sexuales se enfrentan a múltiples agresiones en medio de la ola de violencia que sacude El Salvador”), *Plaperts Latinoamérica*, July 17, 2020, <https://plaperts.nswp.org/node/48> (accessed September 11, 2020).

<sup>136</sup> Human Rights Watch interview with Maria I., location withheld, July 18, 2019.

<sup>137</sup> *Ibid.*

<sup>138</sup> The police report is on file with Human Rights Watch.

about his brother's murder, threatening them with a machete. Soon after, he and Sandra's aunt, along with her grandmother, fled El Salvador for Mexico, and in January 2018 the gang turned its attention to Sandra, who owned a small shop.

The gangs threatened me more than 10 times. The first time, they came to my work. They said they were gang members from MS and I had to pay them the quota for them to protect me and to not have problems. Later, they said they knew I had a girlfriend, maybe the third time that they came. They started making machista comments, 'You've never been with a man, you don't know how good it feels'.... They said they were going to teach me what it was really like to be with a man. I was afraid they were going to do something more than threaten me.<sup>139</sup>

Sandra paid up, while she could, and never considered reporting the threats and extortion to the police:

I didn't ever try to go to the police.... [in El Salvador], the police don't even start investigations. I had never gone to the police. I had heard this from other people, and the news. People filed complaints and police do not do anything. The only thing you can do is flee.... When I couldn't pay them anymore, I decided to leave.<sup>140</sup>

Sandra stayed in Chiapas, Mexico with her aunt, uncle, and grandmother for about six months, but left Mexico for the United States after four men sexually assaulted her in Chiapas, as documented in the section below. When her uncle returned to El Salvador in 2019 to care for a child who had remained there, Sandra said, MS-13 members killed him.<sup>141</sup>

One danger that faces many Salvadorans in gang-controlled neighborhoods, but that has particular salience with regard to trans people and some lesbian, gay and bisexual people, is forced recruitment.

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<sup>139</sup> Human Rights Watch interview with Sandra C., Los Angeles, December 10, 2019.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

Johanna Ramírez, a researcher with Servicio Social Pasionista, in the Mejicanos neighborhood of San Salvador, told Human Rights Watch, “LGBT people are recruited by the gangs as collaborators because they’re seen as vulnerable people, easier to manipulate.”<sup>142</sup>

Pricila P., a 32-year-old trans woman from San Salvador, faced forced recruitment attempts. In 2017, MS-13 members asked her to store guns and drugs in her home. They knew that she was living alone because her family had rejected her. “They thought that because I was a faggot—gender identity doesn’t exist for them—that I would have to cooperate with them.”<sup>143</sup> The next night, she said, three gang members arrived at her house demanding her answer.

When I said, ‘No,’ one of them grabbed me and threw me to the floor. He hit me in the stomach. One of them lifted his shirt and showed me his tattoo. He said, ‘You respect the gangs. You respect these two letters.’ They beat me, and they burned a part of my foot with a lighter that they lit a cloth with and dropped on my foot.<sup>144</sup>

Pricila P. showed Human Rights Watch researchers the scar on her foot, where gang members had torched a cloth and dropped it on her.<sup>145</sup>

When she continued to refuse to work with MS-13, they told her she would have to pay “tax” twice a month:

Every first and 16th day of the month they arrived in my house. Often, I couldn’t pay them. When I couldn’t pay, they came with a wooden bat. There was a big, empty house at the end of the community. They took me there, put me against the wall, and beat me. They said that their bat was the law. They hit me 13 times, to represent the name of the gang. On many occasions I had to stay lying there, vomiting blood, until I could get up and

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<sup>142</sup> Human Rights Watch interview with Johanna Ramírez, San Salvador, July 23, 2019.

<sup>143</sup> Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

go home.... You can't ask for help, because obviously people don't get involved, for their own security.<sup>146</sup>

They also told people in the neighborhood that Pricila had AIDS. After this, she said, "People started to shout at me, beat me, throw rocks at me."<sup>147</sup>

To pay the "rent" MS-13 demanded, Pricila, who had a low-paying job working at a store, turned to sex work. "I didn't like exercising that profession, but unfortunately I had to do it to pay the gangs. This continued through 2018, the formal job and the informal job," she said.<sup>148</sup>

On February 13, 2019, Pricila was witness to MS-13's abduction of a gay friend, whom the gang had also been trying to recruit. She saw gang members force her friend into a car and drive away. Later that night, they came for Pricila.

At around 11:30 or 12 at night they knocked on my door and they said if I continued to refuse [to join], the next person to disappear would be me, and also because I had been a witness.... So unfortunately I had to leave my country, at 4 a.m. on February 14th. I just grabbed a backpack, I didn't plan. I threw in a few things and the little money that I had.<sup>149</sup>

Pricila P. continued to experience violence on her journey through Mexico, but eventually made it safely to the United States and applied for asylum. At time of writing, her next hearing was not scheduled until December 2021 due to Covid-19-related slowdowns in the US immigration system.<sup>150</sup>

Kiana C., a 30-year-old trans woman, also fled El Salvador because of gang violence, accompanied by discriminatory police treatment. Kiana C. told Human Rights Watch that in December 2018 and January 2019, gang members from both MS-13 and Barrio 18 threatened to kill her:

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<sup>146</sup> Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Human Rights Watch telephone interview with Pricila P., August 11, 2020.



MS controlled the area where I lived, and the 18 controlled where I worked [as a sex worker]. Barrio 18 members were the ones who attacked me. They told me I needed to leave the colonia or I would leave in a bag. The prosecutor's office and the police came to my house, and MS thought it was [because I had reported] them. They told me I needed to leave and go far, or they would kill me.<sup>151</sup>

Her attempt to report the threats to the police, with the assistance of the trans organization COMCAVIS, was met with further abuse:

I filed a complaint, but the police derided me, calling me a prostitute, a gay, saying that I was a slut from the streets and that they weren't going to help me. They called me 'faggot.'<sup>152</sup>

Kiana C. said the police refused to give her a copy of the criminal complaint that detailed the testimony she provided them and the case number, and she did not know whether it was ever investigated. Without a copy of the criminal complaint, she will also lack an important document to corroborate her experience of the violence in her asylum application. Fearing her life was at risk, she fled to Mexico.<sup>153</sup> She entered the United States and filed an asylum claim shortly before the border closed to asylum seekers in March 2020.<sup>154</sup>

It is not always clear to what extent gang violence in El Salvador is directly related to a victim's sexual orientation or gender identity, but gangs sometimes used these details to further threaten someone.

Frank, a non-binary person from Santa Ana, said that in 2010, when they were 16, a gang kidnapped them and held them for ransom in a cave for four days, demanding \$20,000 from Frank's family members in the United States. Throughout the ordeal, during which gang members hit Frank on the feet and stomach and withheld food, they also repeatedly

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<sup>151</sup> Human Rights Watch interview with Kiana C., Tijuana, Mexico, January 31, 2020.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Human Rights Watch telephone interview with a representative of an LGBT shelter in Tijuana, August 2020.

asked “Are you a faggot?” They threatened to “sell” Frank if their family did not come up with the money. They freed them when Frank’s family paid the ransom.<sup>155</sup>

Yésica N., a trans woman from San Luis Talpa, recounted a chilling story of the murder of three of her close friends—Daniela, Yasuri, and Elizabeth, all trans women—after they refused to sell drugs for a gang. It is unclear whether the gang’s demand was related to the victims’ gender identity. Yésica N. told Human Rights Watch:

Gang members had told them a year before their death: ‘If you want to live in this place, you have to sell drugs for us.’ Two [other trans friends who had been threatened] fled to Mexico. The other girls stayed. On February 19 [2017], they killed the first two. Less than 50 steps from the local police station, during the Valentine’s Day dance.<sup>156</sup>

Yésica N. said that two days later, at the burial of the first two victims, Daniela and Yasuri, the third victim, Elizabeth, received a phone call and left to meet someone. Her body was found the next morning. Yésica said Elizabeth’s eyes had been gouged out, her hands tied and her throat slit. Yésica said, “It was also as if I died, in a way.”<sup>157</sup>

Laura I., a 28-year-old trans woman who dropped out of high school due to bullying, said that in 2015, she was studying for her high school diploma at night school, but her efforts to attend night school, too, were thwarted. On at least three occasions, when she was walking home after dark, gang members threatened her from a car, telling her that they did not want to see her in the neighborhood. The third time, one descended from the vehicle. “He lifted his shirt to show me he had a gun. From then on, for a year, I didn’t leave my home after 6 p.m.” Laura I. told Human Rights Watch, “I think it was because they saw me as a trans woman and thought that I was selling sex.”<sup>158</sup>

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<sup>155</sup> Human Rights Watch interview with Frank R., Los Angeles, December 11, 2019.

<sup>156</sup> Human Rights Watch interview with Yésica N. (pseudonym), San Salvador, July 16, 2019.

<sup>157</sup> Ibid.

<sup>158</sup> Human Rights Watch interview with Laura I., San Salvador, July 24, 2019.

Yadira Q., a trans woman in La Union, said that while she had not been personally victimized by gangs, she knew other trans women whom gang members had sexually assaulted, and she had been subjected to threats of sexual violence:

To avoid having problems with them, you have to agree to have sex with them. The gang members told me one time, ‘We don’t have anything against you faggots. It’s just that what we like, we acquire. If we tell you to do something, you do it by choice or you do it by force.’<sup>159</sup>

LGBT people who make a living through sex work face a high level of exposure to gang violence.

Michelle S., a trans woman from Zacatecoluca, began selling sex at age 15 after fleeing violence at the hands of her father, as recounted above.<sup>160</sup> When she was 16 or 17, gang members shot her friend, who was also trans and sold sex, in front of her when the friend refused to pay them “rent.” Police came to the scene of the crime and Michelle, afraid to tell the truth about the attack, told the police that strangers held her up, along with her friend, for money. Rather than providing support to Michelle or referring her to support services for victims of sexual exploitation, the police harassed her about her gender identity. “The police took my testimony, but they also told me this happened to us because we were dressed like women.”<sup>161</sup>

When trans women or other non-conforming people witness gang violence, they may be particularly susceptible to repercussions because of difficulty blending in. Erika, a 39-year-old trans woman from San Salvador, said, “I always was one of those people who said ‘I never want to leave my country. I’m going to die in my country.’” But she fled in 2015 after

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<sup>159</sup> Human Rights Watch interview with Yadira Q., La Union, July 19, 2019.

<sup>160</sup> Consistent with international law on the rights of the child, child prostitution is one of the worst forms of child labor. The use of a child in sexual activities for remuneration or any other form of consideration should be a criminal offense and anyone who uses, offers, obtains, procures or provides a child for such use should be prosecuted. The child who is commercially sexually exploited or engaged in sex work should not be prosecuted or penalized for having been party to illegal sex work. Children engaged in sex work should be provided all appropriate assistance, including assistance in their physical and psychological recovery, and social reintegration, and where necessary, protective measures should be taken.

<sup>161</sup> Human Rights Watch interview with Michelle S., Washington, D.C., December 6, 2019.

witnessing gang members murder four people in her neighborhood. “When it happened they saw me. They knew I was a witness. After a week they came and threatened me.”<sup>162</sup>

Erika did not know where she could hide, or blend in, as a visible trans woman in a small country run largely by gangs.

Sometimes they say you should move to another department, but the government doesn’t have control of the country, and all the criminality is interconnected, so you can’t escape it. Especially being trans, you can’t hide yourself.<sup>163</sup>

When Lisa A., a 27-year old trans women in San Miguel, was abducted by a gang, she had little recourse, especially as police appeared to be complicit in the violence by returning her to the perpetrators after she called for help: Lisa A. hailed a taxi to get home from a party on November 8, 2018. The taxi driver then picked up a man who he said was a friend whom he would drop off before taking Lisa to her destination. But on the city outskirts, the driver stopped the car in a dark, vacant area.

He pulled out a pistol from his belt and told me ‘You messed with someone you shouldn’t have messed with.’ ‘Who?’ I asked. He said: ‘I’m going to leave you here with two bullets in you.’

He told me to go toward the wood, but I thought: I’m not ready to die like this. I hit him with my purse. The pistol fell, and I took off running.<sup>164</sup>

Lisa A. ran into the hills, hid in the bushes, and called 911. The operator told her to enable GPS on her phone to send her location. When police arrived 30 minutes later, Lisa emerged from her hiding place and approached the officers, who were talking to the men who had threatened her, men she had concluded must be gang members. According to Lisa:

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<sup>162</sup> Human Rights Watch interview with Erika Q., Washington, D.C., December 5, 2019.

<sup>163</sup> Ibid. Human Rights Watch has also reported on how difficult it is for any victim of gang violence in El Salvador to safely relocate within the country. See Human Rights Watch, *Deported to Danger*, pp. 50-55.

<sup>164</sup> Human Rights Watch interview with Lisa A. (pseudonym), La Union, July 19, 2019.

The police officer just looked at me. I showed my cell phone to show that I had made the 911 call. He took my phone and asked: ‘What were you doing with them?’ ‘I don’t know them, I wanted the taxi driver to take me back to my neighborhood and I don’t know why they took me here.’ The police officers and the gang members stood and looked at each other for a while, and then the police officer just handed me over to the gang members, without words. The police officer gave me a push and turned me over.<sup>165</sup>

Lisa A. said the gang held her captive in a cave in the forest, where her two abductors were joined by others.<sup>166</sup> Lisa A. described her captivity:

During the time that they had me there, they tortured me, they beat me, they asked me why I dress like this, saying ‘We don’t like faggots.’ ... Several of them raped me.... They shaved my head.<sup>167</sup>

Lisa A. managed to escape after four days. She ran through the woods, found the highway, and caught a ride back to San Miguel, where she went to the police station to file a report. The officers on duty insisted she could only file a report if she had her identification documents. Lisa A. said that despite her explanation that she had just escaped a kidnapping, and her obvious injuries, the police turned her away. She tried another police station, but after being made to wait several hours while police officers joked about her gender expression, she left without filing her complaint.<sup>168</sup>

## Discrimination in El Salvador: A Pathway to Life on the Margins

While El Salvador’s penal code prohibits discrimination by state officials, as discussed above, LGBT people have no protection against violence in sectors such as education, employment and housing. A 2018 study by Spain’s international development agency found that “the structural character of the discrimination and exclusion of LGBTI people

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<sup>165</sup> Human Rights Watch interview with Lisa A. (pseudonym), La Union, July 19, 2019.

<sup>166</sup> The existence of such gang hide-outs in the forests has been confirmed by Salvadoran police. Fátima Membreño, “Police Discover Four Gang Hideouts in the Hills” (“Policía descubre cuatro refugios de pandilleros en cerros”), *La Prensa Gráfica*, November 4, 2019, <https://www.laprensagrafica.com/elsalvador/Policia--descubre-cuatro-refugios-de-pandilleros-en-cerros-20191103-0753.html> (accessed September 11, 2020).

<sup>167</sup> Human Rights Watch interview with Lisa A. (pseudonym), La Union, July 19, 2019.

<sup>168</sup> *Ibid.*

places them, often from a young age, in a cycle of poverty because of the lack of access to services, opportunities, and social services.”<sup>169</sup> El Salvador, like most countries, does not keep statistics regarding LGBT people’s economic vulnerability, but Human Rights Watch heard from LGBT Salvadorans that education and employment discrimination limited their options, sometimes landing them in poverty.

Poverty is not just a harm in itself in El Salvador; people living in poverty are disproportionately affected by violence. Human Rights Watch’s 2020 investigation *Deported to Danger* found that gang violence is concentrated in specific urban neighborhoods, many of which are completely controlled by gangs.<sup>170</sup>

LGBT people, who are pushed into the social and economic margins by a lifetime of discrimination, are likely to have few options with regard to choosing a safe place to live. Trans women, who are often both impoverished and compelled to engage in sex work as a result of employment discrimination, are even more likely to face violence from gangs, the police, and clients. Erika Q., a 39-year-old trans woman from San Salvador, said she turned to sex work to survive after she was unable to obtain other employment:

In El Salvador, many fall into prostitution because there is no other way to subsist. You lose hope. I lost hope about finding work in El Salvador. I applied to many places, but they never called me back.... What we really need is access to work.<sup>171</sup>

Erika Q. had dropped out of school because of bullying, which impeded her future opportunities:

I studied up to ninth grade. I was discouraged [and left school because] when you start to realize you have a different identity, you realize it’s going

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<sup>169</sup> Agencia Española de Cooperación Internacional y Desarrollo (Spanish Agency for International Cooperation and Development), *Study about the Situation of LGBTI People from the North of Central America with International Protection Needs in Guatemala and Mexico (Estudio sobre la situación de las personas LGBTI del norte de Centroamérica con necesidades de protección internacional en Guatemala y México)*, August 2018, <http://www.aecid.es/Centro-Documentacion/Documentos/Acci%C3%B3n%20Humanitaria/Estudio%20LGBTI%20Norte%20Centroamerica.pdf> (accessed September 11, 2020), p. 20.

<sup>170</sup> Human Rights Watch, *Deported to Danger*, section IV.

<sup>171</sup> Human Rights Watch interview with Erika Q., Washington, D.C., December 5, 2019.

to be a fight. There were many jokes from other students. You're not psychologically prepared for that. They see us [trans people] as people without feelings.<sup>172</sup>

Other LGBT people were kicked out of classes or threatened with expulsion from school due to gender nonconformity. Nelson V., a trans man, said that in fourth grade, the assistant director of his primary school began to harass him about wearing pants rather than a skirt. He had to repeat a grade after being kicked out of class repeatedly, he said.

The assistant director said that he was going to throw me out of school. He sent me home because I came to school wearing pants and was not allowed into class. He always bothered me: 'Who is your boyfriend? Is Jorge your boyfriend? Or is he your girlfriend?'<sup>173</sup>

Ricardo S., a gay man, described harassment from his public high school teachers in San Salvador for being "very effeminate." One teacher, who caught him with makeup on, said it was "for faggots" and threatened to expel him. She sent him to a psychologist, who urged him to get a girlfriend. To stay in school and avoid further problems, Ricardo pretended that a female friend was his girlfriend.<sup>174</sup>

Xavier H., a 26-year-old trans man, remembered being bullied by classmates for being "different." They threw stones at him, he said, and teachers did nothing. Sometimes Xavier hid in the bathroom to eat lunch, to escape bullying, but sometimes "they pulled me out of the bathroom by force and beat me hard."<sup>175</sup> Xavier continued to suffer discrimination in university, where in 2015, during what was supposed to be the last year of his veterinary program, he was repeatedly rejected when applying for placements for a required external internship because of what he believed was anti-trans bias. When Human Rights Watch interviewed him in 2019, he had still not managed to do his internship and complete the program.<sup>176</sup>

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<sup>172</sup> Human Rights Watch interview with Erika Q., Washington, D.C., December 5, 2019.

<sup>173</sup> Human Rights Watch interview with Nelson V., San Salvador, May 3, 2019.

<sup>174</sup> Human Rights Watch interview with Ricardo S., San Salvador, April 30, 2019.

<sup>175</sup> Human Rights Watch interview with Xavier H., San Salvador, May 3, 2019.

<sup>176</sup> Human Rights Watch interview with Xavier H., San Salvador, May 3, 2019.

Xavier did manage to find a job in a veterinary clinic, despite not having completed his degree, but there, too, he faced harassment from colleagues who disparaged his gender identity and insisted on calling him by his dead name (the name on his official documents). Xavier said he was also paid less than similarly qualified colleagues. He eventually left his job.<sup>177</sup>

Navas F., a trans man in San Salvador who studied hospitality, also found employment opportunities were closed to him because of his gender identity. “I went to leave my CV at hotels and restaurants but there was no door open to me.” He was invited for a job interview at one restaurant, where the person interviewing him observed that there was an “error” on his identity documents. Navas explained he was a trans man. He did not hear back from the employer.<sup>178</sup>

LGBT people may also be held back from opportunities or promotions. Henryk A., a trans man, said his supervisor refused to send him to trainings and denied him opportunities for advancement that were available to his cisgender colleagues at the medical laboratory where he worked.<sup>179</sup>

Pricila P., a trans woman from San Salvador, said that finding employment was contingent on hiding her gender identity: “People like me are not accepted. I always knew I was a girl, but I had to cut my hair short and dress in men’s clothes to have a formal job.”<sup>180</sup>

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<sup>177</sup> Ibid.

<sup>178</sup> Human Rights Watch interview with Navas F., San Salvador, July 24, 2019.

<sup>179</sup> Human Rights Watch interview with Henrik A., San Salvador, May 3, 2019.

<sup>180</sup> Human Rights Watch interview with Pricila P., Los Angeles, December 11, 2019.



### III. Guatemala

Their intention is to erase what is not normal.

—Juan Pablo Escalante, gay activist, Huehuetenango, Guatemala, August 5, 2019.

#### Background

United Nations High Commissioner for Human Rights Michelle Bachelet, in a January 2020 report, referred to Guatemala’s “challenging human rights context, with persisting high levels of inequality, discrimination, insecurity and impunity.”<sup>181</sup> Powerful criminal organizations, “among the most sophisticated and dangerous in Central America,” control people and territory through terror, their principal tools including violence and extortion.<sup>182</sup> Guatemala City is one of the most violent cities in Latin America. In 2018, 42.5 homicides were registered per 100,000 inhabitants.<sup>183</sup>

Impunity plagues the criminal justice system, and victims find it difficult to obtain redress for crimes ranging from corruption to gang-related violence to crimes against humanity committed during Guatemala’s 36-year civil conflict. The United Nations-backed International Commission against Impunity in Guatemala (CICIG), established in 2007, played a significant role in dismantling criminal networks, but the government shut it down in 2019 after it sought to strip then-President Jimmy Morales of his presidential immunity in order to investigate his potential role in illicit financing by his presidential campaign.<sup>184</sup>

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<sup>181</sup> UN Human Rights Council, “Situation of Human Rights in Guatemala: Report of the High Commissioner for Human Rights,” A/HRC/43/3/Add.1, January 17, 2020, <https://undocs.org/en/A/HRC/43/3/Add.1> (accessed September 11, 2020), p. 2, para. 5.

<sup>182</sup> “Guatemala Profile,” InSight Crime, <https://www.insightcrime.org/guatemala-organized-crime-news/guatemala> (accessed September 11, 2020).

<sup>183</sup> Maria Alejandra Navarrete and Anastasia Austin, “Capital Murder: 2019 Homicide Rates in Latin America’s Capital Cities,” InSight Crime, March 5, 2020, <https://www.insightcrime.org/news/analysis/2019-homicides-latin-america-capital> (accessed September 11, 2020). Other parts of Guatemala have less instances of violence than Guatemala City, but rates remain high: overall, there were 22.4 homicides per 100,000 inhabitants in 2018. Chris Dalby and Camilo Carranza, “Insight Crime’s 2018 Homicide Round-Up,” InSight Crime, January 22, 2019, <https://www.insightcrime.org/news/analysis/insight-crime-2018-homicide-roundup> (accessed September 11, 2020). This compares to, for instance, 5.9 homicides per 100,000 inhabitants in Washington, D.C. Dan Taylor, “FBI Crime Stats: See Where DC Stands,” Patch, October 3, 2019, <https://patch.com/district-columbia/washingtondc/fbi-crime-stats-see-where-dc-stands> (accessed September 11, 2020).

<sup>184</sup> “Guatemala’s President Shuts Down Anti-Corruption Commission Backed by U.N.,” *Associated Press*, reprinted in *New York Times*, August 31, 2018, <https://www.nytimes.com/2018/08/31/world/americas/guatemala-corruption-commission-morales.html> (accessed September 11, 2020).

In 2019, Alexander Giammattei was elected president on a platform to boost economic growth and control violence.<sup>185</sup>

Poverty and economic insecurity affect many Guatemalans, with UNDP reporting that in 2019, more than 28 percent of the population suffered multidimensional poverty, which refers to the cumulative effects of poverty including on education, health, living standards, quality of work and exposure to violence.<sup>186</sup> LGBT people may bear a particularly high burden of poverty: Guatemala’s Human Rights Ombudsperson’s Office described as “worrying” a finding in its 2017 survey of Guatemalan LGBTQI people that 58 percent of those surveyed made less than 5,000 *quetzales* (about US\$650) per month.<sup>187</sup>

## Sexual Orientation and Gender Identity in Guatemala

### *Legal and Policy Context*

Guatemala’s Human Rights Ombudsperson’s Office has condemned the absence of public policy to address anti-LGBT discrimination, pointing out that “LGBTIQ people who have been victims of crimes based on sexual orientation or gender identity have been totally invisibilized, especially with regard to the crime of discrimination,” in the Guatemalan justice system, creating a context in which employers, landlords, health care facilities, schools, and other public and private institutions are unlikely to be held accountable for discrimination against LGBT people.<sup>188</sup>

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<sup>185</sup> Dina Fernandez, “Giammattei: Official, Prisoner, and Now President-Elect” (“Giammattei: Funcionario, preso y ahora Presidente electo”), *Soy 502*, August 12, 2019, <https://www.soy502.com/articulo/giammattei-funcionario-presos-ahora-presidente-electo-149> (accessed September 11, 2020).

<sup>186</sup> UNDP, *Human Development Report 2019: Guatemala*, [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/GTM.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GTM.pdf) (accessed September 11, 2020). Multidimensional poverty is assessed by means of indicators on health (nutrition and child mortality), education (years of schooling and school attendance), and standard of living (electricity, sanitation, drinking water, housing, cooking fuel, assets). Scores under 1/3 indicate multidimensional poverty. UNDP, *Human Development Indices and Indicators: 2019 Statistical Update, Technical Notes*, [http://hdr.undp.org/sites/default/files/hdr2018\\_technical\\_notes.pdf](http://hdr.undp.org/sites/default/files/hdr2018_technical_notes.pdf) (accessed September 11, 2020), pp. 9-11.

<sup>187</sup> Procuraduría de los Derechos Humanos (Human Rights Ombuds Office), *Baseline LGBTI (Línea Base LGBTI)*, August 2018, [https://drive.google.com/file/d/1q5Dn82UF\\_yTKfR6PRcKzqmtlFzyRtoqC/view](https://drive.google.com/file/d/1q5Dn82UF_yTKfR6PRcKzqmtlFzyRtoqC/view) (accessed September 11, 2020), p. 15.

<sup>188</sup> Procuraduría de los Derechos Humanos, “Contribución del Procurador de Derechos Humanos de Guatemala al Informe del experto independiente de Naciones Unidas sobre protección contra la violencia y la discriminación por orientación sexual e identidad de género” (“Guatemalan Human Rights Ombudsperson’s Contribution to the Report of the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity”), February 2019, <https://www.ohchr.org/Documents/Issues/SexualOrientation/Data/GuatemalaOmbudsperson.docx> (accessed September 11, 2020). One exception to this invisibility is the Migration Code of 2016, which includes a provision protecting migrants from discrimination on various grounds, including sex and sexual orientation. Migration Code, Decree No. 44-2016, <http://igm.gob.gt/wp-content/uploads/2017/09/CODIGO-MIGRACION-DTO-44-2016.pdf> (accessed September 11, 2020).

Guatemala has no comprehensive civil non-discrimination legislation that explicitly protects people from discrimination on the grounds of sexual orientation and gender identity. Article 202 *bis* of the penal code prohibits discrimination based on gender, race, ethnicity, language, age, religion, economic status, sickness, disability, marriage status, or “any other motive, reason or circumstance.”<sup>189</sup> In December 2019, Congressmember Karina Paz introduced a bill, pending at time of writing, that would amend article 202 bis to include sexual orientation and gender identity.<sup>190</sup> Rather than prioritizing extension of the criminal law, which should not be used as the primary tool to protect against discrimination, legislators should focus on adopting a comprehensive civil law prohibiting discrimination.

Guatemala does have some non-criminal legal protections against discrimination. For example, the labor code protects against discrimination in employment on grounds of race, religion, political opinion, and socioeconomic status. However, it makes no mention of sexual orientation or gender identity and does not contain an expansive provision including “other grounds.”<sup>191</sup>

Discrimination against transgender people, in particular, flourishes in a context in which no law allows transgender people to change their gender markers on official documents. Congressmember Sandra Moran, who made history in 2015 as the first openly lesbian, gay, bisexual, or transgender person elected to Congress, attempted to introduce such a law in 2017 (Initiative 5395). The bill was referred to the Women’s Commission and the

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<sup>189</sup> Congress of the Republic of Guatemala, Decree 57-2002, <http://scm.oas.org/pdfs/2002/cp10270.pdf> (accessed September 11, 2020), art. 1. Sentences are one to three years in prison and a fine, and can be augmented by 30 percent under aggravating circumstances, including when the accused is a public official. As the Guatemalan LGBT rights organization Visibles points out, the law can be read as inclusive of sexual orientation and gender identity, even though they are not specifically included as protected grounds. Visibles, *Violence Against the LGBTIQ Population: Experiences and Dynamics that Sustain it (Violencia Contra la Población LGBTIQ: Vivencias y dinámicas que la sostienen)*, 2020, [https://visibles.gt/wp-content/uploads/2020/05/Violencia\\_contra\\_la\\_poblacion\\_LGBTIQ.pdf](https://visibles.gt/wp-content/uploads/2020/05/Violencia_contra_la_poblacion_LGBTIQ.pdf) (accessed September 11, 2020), pp. 20-21. Human Rights Watch is unaware of any case in which the law has been used to prosecute an act of anti-LGBT discrimination.

<sup>190</sup> Oscar García, “Bill to Prevent Discrimination Against LGBTIQ People Presented” (“Presentan iniciativa de ley para prevenir la discriminación contra personas LGTBIQ”), *Guatevisión*, December 18, 2019, <https://www.guatevisión.com/nacionales/presentan-iniciativa-de-ley-para-prevenir-la-discriminacion-contra-personas-lgtbiq> (accessed September 11, 2020).

<sup>191</sup> Código de Trabajo de Guatemala (Labor Code of Guatemala), Decree No. 1441, <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gto15es.pdf> (accessed September 11, 2020). Visibles argues that the Labor Code could be read in conjunction with constitutional rights provisions in such a way that LGBT Guatemalans could make a case for recourse for employment discrimination, but many Guatemalan LGBT people may be unaware of the existence of such possibilities for legal recourse. Visibles, *Violencia Contra la Población LGBTIQ*, [https://visibles.gt/wp-content/uploads/2020/05/Violencia\\_contra\\_la\\_poblacion\\_LGBTIQ.pdf](https://visibles.gt/wp-content/uploads/2020/05/Violencia_contra_la_poblacion_LGBTIQ.pdf), pp. 19-20.

Legislative Commission within Congress, which both gave it an unfavorable opinion in August 2018, meaning the bill never advanced to a vote in Congress.<sup>192</sup> Women’s Commission President Aníbal Rojas objected based on the claim that legal gender recognition could bring about marriage between two men.<sup>193</sup>

In 2008 Guatemala passed a law against femicide and other forms of violence against women, including physical and sexual violence. The law makes femicide, defined as the “violent death of a woman by virtue of her gender, as it occurs in the context of the unequal gender relations between men and women,” punishable by 25 to 50 years in prison. Other forms of violence against women are punishable by five to 12 years in prison.<sup>194</sup> The Femicide Law, which supplements the penal code, is notable not only for lengthier sentences but also for the obligations it imposes on the state, including providing shelter for domestic violence survivors and collecting data on violence against women: obligations which the state has, by and large, failed to meet.<sup>195</sup> The law has also rarely resulted in convictions.<sup>196</sup> Guatemalan officials have stated that the Femicide Law does not apply to trans women because they are not “biological women.”<sup>197</sup>

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<sup>192</sup> Comisión de la Mujer, Congreso de la República (Women’s Commission, Guatemalan Congress), “Dictamen No 02-2018,” Re/: /ICDLM-012-AERE- cmcv-2018 Guatemala, September 25 2018, [https://www.congreso.gob.gt/assets/uploads/info\\_legislativo/dictamen/1539621334\\_Dictamen%205395%20CM.pdf](https://www.congreso.gob.gt/assets/uploads/info_legislativo/dictamen/1539621334_Dictamen%205395%20CM.pdf) (accessed September 11, 2020); “Congress Violates the Rights of LGBTIQ People With Unfavorable Opinion” (“Congreso vulnera derechos de personas LGBTIQ con dictamen desfavorable”), *Visibles*, August 29, 2018, <https://www.visibles.gt/congreso-vulnera-derechos-de-personas-lgbtqi-con-dictamen-desfavorable> (accessed September 11, 2020).

<sup>193</sup> Dulce Rivera, “Gender Identity Law Receives Unfavorable Opinion” (“Ley de identidad de género recibe dictamen desfavorable”), *Guatevisión*, August 29, 2018, <https://www.guatevision.com/noticias/nacional/ley-identidad-genero-dictamen-desfavorable> (accessed September 11, 2020).

<sup>194</sup> Congress of the Republic of Guatemala, Decree 22-2008, Law Against Femicide and Other Forms of Violence Against Women (Ley Contra el Femicidio y otras Formas de Violencia Contra la Mujer), May 2, 2008, [https://www.oas.org/dil/esp/ley\\_contra\\_el\\_femicidio\\_y\\_otras\\_formas\\_de\\_violencia\\_contra\\_la\\_mujer\\_guatemala.pdf](https://www.oas.org/dil/esp/ley_contra_el_femicidio_y_otras_formas_de_violencia_contra_la_mujer_guatemala.pdf) (accessed September 11, 2020), arts. 6-7. In comparison, the penal code punishes homicide with 15 to 40 years in prison, and premeditated murder with the same penalty as that provided for femicide; for assault, it provides for between six months and 12 years in prison depending on the gravity of the physical impact suffered. Republic of Guatemala, Penal Code, [https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM\\_codigo\\_penal.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf) (accessed September 11, 2020), arts. 123, 132 (homicide and aggravated murder), 145-148 (assault).

<sup>195</sup> “Guatemala: Submission to the Human Rights Committee for the 11th Session,” The Advocates for Human Rights, August 2015, [https://www.theadvocatesforhumanrights.org/uploads/guatemala\\_hrc\\_loipr\\_august\\_2015.pdf](https://www.theadvocatesforhumanrights.org/uploads/guatemala_hrc_loipr_august_2015.pdf) (accessed September 11, 2020).

<sup>196</sup> Héctor Ruiz, “No Justice for Guatemalan Women: An Update Twenty Years After Guatemala’s First Violence Against Women Law,” *Hastings Women’s Law Journal*/vol. 29:1, winter 2018, [https://cgrrs.uchastings.edu/sites/default/files/Hector%20Ruiz\\_Guatemala%20VAW%20Article\\_2017.pdf](https://cgrrs.uchastings.edu/sites/default/files/Hector%20Ruiz_Guatemala%20VAW%20Article_2017.pdf) (accessed September 11, 2020).

<sup>197</sup> *Ibid.*; REDLACTRANS, *The Night is Another Country: Impunity and Violence Against Transgender Women Human Rights Defenders in Latin America*, May 2012, <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English1.pdf> (accessed September 11, 2020), p. 30.

In 2017, Congressman Morán introduced Initiative 5278, a bill that would have amended article 27 of the penal code to punish hate crimes based on sexual orientation, gender identity, age and religion as aggravated offenses, and would also have criminalized anti-LGBT discrimination.<sup>198</sup> The bill was rejected in a congressional committee and did not advance to a vote.<sup>199</sup> Morán reintroduced a new hate crimes initiative, Initiative 5674, in December 2019, which would compel the government to uphold a commitment made to the Inter-American Commission on Human Rights in 2020 to establish a comprehensive national plan to protect LGBT and intersex rights. The initiative would also require the Ministry of Education to put in place an anti-bullying plan aimed at protecting LGBT students, and the Ministry of Social Development to establish programs to combat the social marginalization of trans people.<sup>200</sup>

The Attorney General’s office does attempt to track anti-LGBT hate crimes. In 2014, through its case management system, SICOMP, the Attorney General’s office introduced a box that the official receiving a complaint could tick if the person filing the complaint self-identified as LGBT. But several interviewees told Human Rights Watch the box is not used as a matter of practice. Lucía O., a lesbian who filed a report after her girlfriend became violent with her and robbed her, said, “The girl who took the report didn’t know where the box was to mark that I was LGBT.”<sup>201</sup> Noelia A., who accompanied another trans woman to file a report after she had been attacked, said, “The prosecutor that assisted us addressed her as a

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<sup>198</sup> Congress of the Republic of Guatemala, Initiative 5278, *Ley para Sancionar los Crímenes por Prejuicio (Law to Sanction Bias-Based Crimes)*, introduced August 27, 2017, on file with Human Rights Watch; Henry Estuardo Pocasangre and Jessica Gramajo, “Bill Proposes Punishing Homophobia” (“Iniciativa propone sancionar la homofobia”), *Prensa Libre*, May 4, 2017, <https://www.prensalibre.com/guatemala/politica/iniciativa-propone-sancionar-la-homofobia> (accessed September 11, 2020).

<sup>199</sup> Inter-American Commission on Human Rights, Informe Anual 2018, Chapter V, Follow-up on Recommendations Made by the IACHR in its Country or Thematic Reports, Follow-up Report on Recommendations Made by the IACHR in the Report on the Situation of Human Rights in Guatemala (Capítulo V, Seguimiento de Recomendaciones Formuladas por la CIDH en sus Informes de País o Temáticos, Informe de Seguimiento de Recomendaciones Formuladas por la CIDH en el Informe sobre Situación de Derechos Humanos en Guatemala), <http://www.oas.org/es/cidh/docs/anual/2018/docs/IA2018cap.5GUs.pdf> (accessed September 11, 2020), p. 662.

<sup>200</sup> Congress of the Republic of Guatemala, *Bill to Prevent and Punish Bias-Based Crimes (Proyecto de Ley Para Prevenir y Sancionar Crímenes Por Prejuicio)*, introduced December 11, 2019, on file with Human Rights Watch; Eddy Coronado and Dulce Rivera, “Congressmember Calls for Stronger Sentences for Crimes Against the LGBT Community” (“Diputada pide mayor sanción por crímenes contra comunidad LGBT”), *Prensa Libre*, December 11, 2019, <https://www.prensalibre.com/guatemala/politica/diputada-pide-sancionar-personas-que-cometan-crimenes-contra-comunidad-lgbt> (accessed September 11, 2020).

<sup>201</sup> Human Rights Watch interview with Lucía O., Quetzaltenango, May 8, 2019.

man. And he told me that it was not possible to put ‘trans woman’ in the file. We asked him to do it, but he told me, ‘No.’”<sup>202</sup>

Meanwhile, a bill rooted in homophobia has been advancing in the legislature. In 2018, Evangelical leaders drafted the proposed Life and Family Protection Bill, which would institutionalize discrimination against LGBT people in Guatemala, introducing the bill in parliament as a popular initiative.<sup>203</sup> The bill, approved by Congress in an initial reading in August 2018, defines marriage as a union between a man and a woman. The bill describes “sexual diversity” as “incompatible with the biological and genetic aspects of human beings.” It establishes that “freedom of conscience and expression” protects people from being “obliged to accept non-heterosexual conduct or practices as normal,” a provision that could be used to justify discriminatory denial of services. The Evangelical leader behind the Life and Family Protection Bill told media that the bill also aimed at “preventing Guatemala from engaging on any [international] convention on gender diversity.”<sup>204</sup> Incoming President Giammattei stated during the election campaign that he supported the bill.<sup>205</sup> At time of writing, the bill still needed further legislative approvals in the form of a third reading in Congress before the president could sign it into law.

In the absence of strong protective laws or public policy, the Human Rights Ombudsperson’s Office, a quasi-independent body within the Guatemalan government, has stepped in to vociferously support LGBT people’s rights.<sup>206</sup> In July 2020, several

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<sup>202</sup> Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

<sup>203</sup> A “popular initiative” is introduced by members of the public through a petition gathering signatures, rather than by a member of Parliament. In addition to its anti-LGBT provisions, the bill expands the criminalization of abortion and could subject women who have miscarriages to prosecution. “Guatemala: Reject ‘Life and Family Protection’ Law,” Human Rights Watch news release, August 31, 2018, <https://www.hrw.org/news/2018/08/31/guatemala-reject-life-and-family-protection-law>.

<sup>204</sup> Diana Cariboni, “Evangelicals in Guatemala on Verge of ‘Legalising Homophobia,’” *openDemocracy*, December 13, 2018, <https://www.opendemocracy.net/en/5050/evangelicals-guatemala-legalising-homophobia> (accessed September 11, 2020).

<sup>205</sup> Angel García, “Alejandro Giammattei Rejects Gender Ideology and Supports the Life and Family Protection Law” (“Alejandro Giammattei rechaza ideología de género y apoya la Ley de Protección a la Vida y la Familia”), *Emisoras Unidas*, July 30, 2019, <https://emisorasunidas.com/2019/07/30/alejandro-giammattei-ley-de-proteccion-a-la-vida-y-la-familia> (accessed September 11, 2020).

<sup>206</sup> Procuraduría de los Derechos Humanos de Guatemala, *Annual Report on Activities and the Situation of Human Rights, 2019 (Informe Anual Circunstanciado De Actividades Y De La Situación De Los Derechos Humanos, 2019)*, January 2020, <https://t.co/681PONQH80?amp=1> (accessed September 11, 2020), pp. 249-252.

legislators launched a campaign to have the ombudsperson, Jordán Rojas, dismissed because of his stances in support of LGBT rights and access to abortion.<sup>207</sup>

### *Social Stigma*

In this challenging legal context, LGBT activists have made some progress in pushing for respect and equality, including within the political sphere. Sandra Morán, elected to Congress in 2015, came from a background of activism, as one of the organizers of Guatemala's first known lesbian collective in the 1990s.<sup>208</sup> Morán only served one term, but in 2019 Guatemala's first openly gay male Congressman, Aldo Dávila, followed in her footsteps in Congress. Even electoral success, though, is not a buffer against social stigma. Dávila filed a complaint with congressional leadership in March 2020 after other legislators shouted homophobic insults at him in the congressional chamber.<sup>209</sup>

The same kind of insults plague ordinary LGBT Guatemalans on the streets, in their schools, on the web, and in their workplaces. Sécia G. of the lesbian organization ODISCEA said that her organization had “received a lot of hate mail via website, along the lines of ‘why do you exist if you give nothing back to society’—referring to the fact that we [lesbians] wouldn’t have children.”<sup>210</sup> Paloma C., a trans woman in Guatemala City, told Human Rights Watch that public humiliation, including mockery of her gender identity, is “so common that we just assume that it will happen.”<sup>211</sup> Dolores F., a trans woman from Chichicastenango, said that she had heard people referring to trans women as “demons.”<sup>212</sup> Brandon Saucedo, a gay activist in Huehuetenango department who self-describes as having an androgynous appearance, with long hair and earrings, said:

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<sup>207</sup> “Guatemala: Rights Official at Risk of Dismissal,” Human Rights Watch news release, July 22, 2020, <https://www.hrw.org/news/2020/07/22/guatemala-rights-official-risk-dismissal>.

<sup>208</sup> Nina Lakhani, “In Guatemala to be a Feminist is Not Welcomed, a Lesbian, Even Less so. I am a Lesbian Feminist,” *Guardian*, February 11, 2016, <https://www.theguardian.com/global-development-professionals-network/2016/feb/11/guatemala-feminist-lesbian-sandra-moran> (accessed September 11, 2020).

<sup>209</sup> Angel García, “Faced With Homophobic Insults Against Deputy Aldo Dávila, Calls to Investigate Congressmembers” (“Ante insultos homofóbicos contra diputado Aldo Dávila piden investigar a congresistas”), *Emisoras Unidas*, March 11, 2020, <https://emisorasunidas.com/2020/03/11/aldo-davila-acusa-de-diputados-de-mofarse-de-su-orientacion-sexual> (accessed September 11, 2020).

<sup>210</sup> Human Rights Watch interview with Sécia G., coordinator of ODISCEA, Guatemala City, May 8, 2019.

<sup>211</sup> Human Rights Watch interview with Paloma C. (pseudonym), Guatemala City, May 10, 2019.

<sup>212</sup> Human Rights Watch interview with Dolores F. (pseudonym), Guatemala City, August 12, 2019.

I came out of the closet at age 14, but I don't dare to go out alone at night, for fear of what might happen. Even six- and seven-year old children shout 'faggot' at me in the street.<sup>213</sup>

In rural areas, LGBT issues are particularly taboo, and information about sexual orientation and gender identity is in short supply. The likelihood of social rejection keeps many LGBT people closeted, leaving people who are discovering their sexual or gender identity with few role models.<sup>214</sup> LGBT people also experience rejection from their families. Darwin N., a 22-year-old gay man from a small town in Jalapa who provides informal support for many other young gay people, told Human Rights Watch:

Various people told me that they wanted to take their lives because of the rejection [they suffered] from their family [upon coming out]. A few have tried to.... The last time I heard [something like that] was three days ago. We spoke that same day. At the moment he wanted to do it, he called me... This year, 10 [LGBT people in my town] have tried to commit suicide so far.<sup>215</sup>

Lupita L., a lesbian activist in Quetzaltenango, described how a friend died by suicide after facing family rejection: "They said she was no longer part of the family. She told me she didn't know what to do.... She killed herself."<sup>216</sup>

In some cases, family rejection takes the form of forcing or pushing LGBT family members to undergo conversion therapy, offered by both mental health professionals and religious leaders, sometimes in the form of exorcism of purported demons.<sup>217</sup> Geraldo R., a 23-year-old gay man in Jalapa, said that when he was 17, his parents sent him to a two-week church-based conversion therapy camp. The 13 boys and three girls at the camp, he said, spent the entire day in individual therapy with psychologists and psychiatrists. He recalled that they showed him videos of a young man and woman having sex and asked him how

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<sup>213</sup> Human Rights Watch interview with Brandon Saucedo, Huehuetenango, August 5, 2019.

<sup>214</sup> Human Rights Watch interview with Secia G., coordinator of ODISCEA, Guatemala City, May 8, 2019.

<sup>215</sup> Human Rights Watch interview with Darwin N. (pseudonym), Jalapa, August 13, 2019.

<sup>216</sup> Human Rights Watch interview with Lupita L. (pseudonym), Quetzaltenango, August 7, 2019.

<sup>217</sup> Pia Flores, "Being Gay: They Wanted to 'Cure' Me Through Exorcism and Placement in a Children's Home" ("Ser gay: Quisieron 'curarme' con un exorcismo y con el Hogar Seguro"), *Nómada*, February 7, 2018, <https://nomada.gt/identidades/ser-gay-quisieron-curarme-con-un-exorcismo-y-con-el-hogar-seguro> (accessed September 11, 2020).



he felt. Geraldo came out of the camp convinced he could not change his sexual orientation, but as he told Human Rights Watch, “I had to pretend that I had changed, so that they wouldn’t make me stay at the camp for weeks or months more. I had to resort to getting my best female friend to pretend that we were a couple.”<sup>218</sup>

To cope with immense family pressure, some gay men and lesbians acquiesce to heterosexual marriages. Marco Antonio H., a gay activist from a small town in Huehuetenango, said:

You can’t tell anyone in the community. And people get married, due to social and family pressure. You do it to reduce the risk of violence and because social isolation is powerful.<sup>219</sup>

Family rejection causes some LGBT children to flee their homes. Miriam D., a 33-year-old trans woman in Quetzaltenango, told Human Rights Watch:

Ever since I expressed my orientation, my family started to discriminate against me. I was raped, but my family didn’t believe me, and I left home at 12 years old.<sup>220</sup>

Miriam D. said that she had been selling sex since she was 14 years old. International law on the rights of the child makes clear that child prostitution is one of the worst forms of child labor. States should be prosecuting those who use children in this manner, and providing assistance to children who are commercially sexually exploited.

Noelia A., a 42-year-old trans woman who leads a collective of trans sex workers in Guatemala City, described the marginalization that leads many trans women to sex work:

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<sup>218</sup> Human Rights Watch interview with Geraldo R. (pseudonym), Jalapa, August 13, 2019.

<sup>219</sup> Human Rights Watch interview with Marco Antonio H. (pseudonym), Huehuetenango, August 5, 2019.

<sup>220</sup> Human Rights Watch interview with Miriam D. (pseudonym), Quetzaltenango, August 7, 2019. Human Rights Watch considers engagement of children in sex work sexual exploitation and one of the worst forms of labor. Anyone who uses, offers, obtains, procures or provides a child for such use should be prosecuted while children engaged in sex work should be provided all appropriate assistance, including assistance in their physical and psychological recovery, and social reintegration, and where necessary, protective measures should be taken.

We have been forgotten. We have had to do sex work because of the stigma [that being a trans woman carries] and because of discrimination from [our] family and at work.<sup>221</sup>

Noelia A. said that she had been trained as a cook and a pastry chef, but that she had faced discrimination working in restaurants: “Here, if we sell food, people won’t buy from us because they say that we have HIV.”<sup>222</sup>

Marco Antonio H., the gay activist in Huehuetenango, described the isolation of trans women in the conservative municipality of 50,000 people in which he was raised:

You aren’t given any work opportunities if you’re different.... In the municipality there are three trans women, and all they can do is work in a dive bar and provide sexual services. It’s very much under wraps. Everyone in the municipality knows them and treats them badly, but they’re still there. One of them got a loan through a women’s group and people accused her of robbery and chased her out from where she lived with her family. People don’t respect them, drunk men touch them...<sup>223</sup>

Gabriela Mundo, an official at the Human Rights Ombudsperson’s Office, told Human Rights Watch that far-right groups foment anti-LGBT views: “The anti-rights discourse, especially as regards women and LGBTQ people, is very present. It’s a discourse from ultra-right-wing groups which is used to support attacks against LGBTQ people.”<sup>224</sup>

Guatemala’s population is roughly 44 percent indigenous, according to official statistics.<sup>225</sup> Arcadio S. and Sabino C., Maya Quiché activists working with the indigenous LGBT organization Kajib Kawoq, said that homophobia in contemporary indigenous communities was in part a legacy of Spanish colonialism and the imposition of Catholicism on Mayan communities, and that churches were a significant source of anti-

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<sup>221</sup> Human Rights Watch interview with Noelia A. (pseudonym), Guatemala City, August 12, 2019.

<sup>222</sup> Ibid.

<sup>223</sup> Human Rights Watch interview with Marco Antonio H. (pseudonym), Huehuetenango, August 5, 2019.

<sup>224</sup> Human Rights Watch interview with Gabriela Mundo, Guatemala City, May 8, 2019.

<sup>225</sup> Instituto Nacional de Estadística de Guatemala, “Resultado del Censo 2018,” <https://www.censopoblacion.gt/cuantosomos> (accessed September 11, 2020).

LGBT discrimination.<sup>226</sup> Arcadio S. said that for the Quiché people, one of Guatemala’s 22 indigenous cultures:

Homosexuals have traditionally played an important role in spiritual and artistic leadership. But the imposition of Catholicism changed things: gender stereotypes, “don’t wear pink shirts”.... We have a dualistic spirituality, a god that is man and woman. Catholicism changed this.<sup>227</sup>

Guatemala also has a large and growing Evangelical (Protestant) population, and some influential Evangelical churches have been at the center of efforts to promote and enact anti-LGBT public policies.<sup>228</sup> The result is that in some contemporary tight-knit indigenous communities, Catholic and Evangelical religious influence combines with an emphasis on community norms to contribute to a hostile environment for LGBT people.<sup>229</sup> Indigenous LGBT people who move to Guatemala City or other cities in search of greater individual freedom or a more dynamic queer community life may then be confronted by discrimination on the basis of their indigeneity.

Combined family rejection, religious-based animus, gang control of territory and right-wing antipathy contribute to conditions in which LGBT people in general, and trans people in particular, experience discrimination and abuse.

## Violence Against LGBT People in Guatemala

2020 commenced in Guatemala with the murder of a transgender woman. On new year’s day, Jennifer Ávila, from the small Western Guatemala town of Mazatenango, was found seriously injured, bearing signs of torture and sexual assault. She died after being taken to the hospital.<sup>230</sup> By August 2020, the Human Rights Ombudsperson, Jordán Rojas, reported

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<sup>226</sup> Human Rights Watch interview with Arcadio S. and Sabino C., Quetzaltenango, August 7, 2019.

<sup>227</sup> Human Rights Watch interview with Arcadio S., Quetzaltenango, August 7, 2019.

<sup>228</sup> Cariboni, “Evangelicals in Guatemala on Verge of ‘Legalising Homophobia,’” *openDemocracy*, <https://www.opendemocracy.net/en/5050/evangelicals-guatemala-legalising-homophobia>.

<sup>229</sup> Human Rights Watch interviews with Arcadio S. and Sabino C, Quetzaltenango, August 7, 2019.

<sup>230</sup> Pilar Salazar, “35-year-Old Trans Woman Stoned to Death in Guatemala” (“Lapidaron a una mujer trans en Guatemala: tenía 35 años”), *Presentes*, January 2, 2020, <https://agenciapresentes.org/2020/01/02/lapidaron-a-una-mujer-trans-en-guatemala-tenia-35-anos> (accessed September 11, 2020).

that at least 11 people known to be LGBT had been murdered in Guatemala since the year began.<sup>231</sup>

Of the 52 LGBT Guatemalans whom Human Rights Watch interviewed, six said they had personally experienced violence related to their gender identity or sexual orientation, but at least eleven more said they had been personally impacted by the murder or serious assault of an LGBT friend or acquaintance, or by stories of other LGBT people killed in their locality. In Quetzaltenango, activists with the queer women’s organization *Vidas Paralelas* recited stories of trans women they’d known who had been killed over the years, some shot, some strangled.<sup>232</sup> Human Rights Watch interviewed several LGBT people in Jalapa and Guastatoya who described instances of violence against other LGBT people they knew that appeared to be hate crimes, including the murders of at least two trans people in Jalapa and an 18-year-old gay man in Guastatoya in 2018.<sup>233</sup>

In Huehuetenango, several interviewees spoke of the unsolved murder of José Díaz, an 18-year-old gay man killed by stoning on March 25, 2019.<sup>234</sup> Two days after Díaz, a peer educator with the organization *Gente Positiva*, disappeared on March 25, 2018, his friend Yancy S. heard that Díaz’s body had been found at a construction site. He rushed to the scene of the crime. Yancy S. told Human Rights Watch:

When I arrived at the scene of the crime, the police were approaching the area where he had been found. I told the guys there that I was looking for a friend, and then I saw the body.... The body was face down and had an ‘18’ written on the cheek. It was behind a wooden galley, like a room where they keep construction materials.<sup>235</sup>

Human Rights Watch spoke to several of Díaz’s friends, who were not sure why he had been targeted. At time of writing, two years later, no one had been arrested for the murder.

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<sup>231</sup> Presentation by Jordán Rojas, human rights ombuds, webinar hosted by *Visibles* organization and attended by a Human Rights Watch researcher, August 5, 2020.

<sup>232</sup> Human Rights Watch interview with members of *Vidas Paralelas*, Quetzaltenango, August 7, 2019.

<sup>233</sup> Human Rights Watch interviews, Jalapa, August 13, 2019, and Guastatoya, August 15, 2019.

<sup>234</sup> Human Rights Watch interviews, Huehuetenango, August 6, 2019.

<sup>235</sup> Human Rights Watch interview with Yancy S. (pseudonym), Huehuetenango, August 6, 2019.

Guatemala's Attorney General's Office, in principle, keeps records on the sexual orientation or gender identity of crime victims and complainants. Guatemalan authorities told Human Rights Watch that they had records of 51 criminal complaints between 2016 and 2019 in which an LGBT person was the victim. They said that four of these crimes had resulted in convictions.<sup>236</sup>

But Marlon González, a friend of José Díaz, described challenges he faced in trying to get the murder case registered as LGBT-related. González said he had to proactively ask the person who recorded his complaint to make note of González's sexual orientation, as the complainant, and that it did not seem obvious to the staffer where to record it:

I had to file a complaint before the Attorney General's Office, and on the information sheet there is a box to check for LGBT. The person who took the complaint didn't even know how to write the word gay. I told her that she had to scroll up on the form and I showed her where she had to click. I had to repeat it ['gay'] two times.<sup>237</sup>

Even with systems in place to track anti-LGBT hate crimes, LGBT people in Guatemala said that impunity was the norm. In some cases, impunity followed from police discrimination or indifference. Noelia A., a trans activist in Guatemala City, described calling the police when a trans friend was attacked, for the second time in short succession, by a neighborhood taxi driver who had previously hit her with a baseball bat.

We went to call the police to say that she had been attacked. The same young man attacked her again when she came out of the hospital, and we called the police but they said, 'It's a faggot that they're beating.'<sup>238</sup>

In other cases, police inaction was related to fear of gangs. Lupita L., a lesbian in Quetzaltenango, recounted: "A friend of mine was assassinated by the male ex-partner of

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<sup>236</sup> Human Rights Watch asked for information on the types of crimes and the sexual orientation or gender identity of the victims. The Attorney General's office reported that there were convictions in the cases of a sexual assault in 2017, a homicide of a trans person in 2018, and a homicide and a rape in 2019. Only in the 2018 homicide case was the victim's sexual orientation or gender identity officially registered. Ministerio Público, RESOLUCIÓN UIP/G 2019 — 005356 / bglpda, EXP UIP 2019-00254, July 22, 2019, on file with Human Rights Watch.

<sup>237</sup> Human Rights Watch interview with Marlon González, Huehuetenango, August 5, 2019.

<sup>238</sup> Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

her girlfriend. I went to the police to report it and they said they wouldn't take the case because the ex is a gang member.”<sup>239</sup>

One way in which the Guatemalan authorities facilitate anti-trans violence is by placing trans women in men's prisons, exposing them to violence, including sexual assault. Bárbara Herrarte, a trans activist with the organization Redmmutrans (*Red Multicultural de Mujeres Trans*, Multicultural Network of Trans Women) Guatemala, described her experience in a men's prison: “Always, at night, someone got in my bed and forced me to have sex with him.”<sup>240</sup>

Carlos Valdés of Lambda, an LGBT rights organization in Guatemala, told Human Rights Watch that violence against LGBT people in Guatemala is so common that it leads to what Lambda describes as forced internal displacement.<sup>241</sup> LGBT people may be forced to move or to live on the run because of gang violence. Such violence, endemic in Guatemala, may also target LGBT people in particular because of anti-LGBT sentiments along with their perceived vulnerability, which makes them easy prey for gangs bent on extortion or forced collaboration. LGBT people may be victims of family violence, expelled or abused by parents, guardians, or partners. LGBT people may also be displaced due to hostility from neighbors. These various forms of violence leave many LGBT people living in fear. For some, the best solution is to leave Guatemala altogether.

### *Domestic Violence*

“The nuclear family is one of the earliest and most common aggressors against LGBTI people,” reports the Guatemalan LGBT rights organization Lambda, describing such violence as intended to “convert” LGBTI children into a cis-heteronormative framework.<sup>242</sup> Guatemala's Human Rights Ombudsperson's Office has also reported on intimate partner violence against LGBT people, specifically violence against lesbian and bisexual women from former male partners.<sup>243</sup>

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<sup>239</sup> Human Rights Watch interview with Lupita L., Quetzaltenango, August 6, 2019.

<sup>240</sup> Human Rights Watch interview with Bárbara Herrarte, Guatemala City, May 10, 2019.

<sup>241</sup> Asociación Lambda, *Sin Raíz (Rootless)*, 2016, pp. 48-49 (on file with Human Rights Watch).

<sup>242</sup> *Ibid.*, pp. 28, 43-44.

<sup>243</sup> Procuraduría de los Derechos Humanos (Human Rights Ombuds Office), *Baseline LGBTI (Línea Base LGBTI)*, [https://drive.google.com/file/d/1q5Dn82UF\\_yTKfR6PRcKzqmtlFzyRtoqC/view](https://drive.google.com/file/d/1q5Dn82UF_yTKfR6PRcKzqmtlFzyRtoqC/view).

Human Rights Watch interviewed three LGBT people who experienced serious abuse as children or young adults in their parents' homes. Basilio A., a 24-year-old gay man, was adopted at six months old and grew up in a rural area near the central Guatemalan town of Cobán. His adoptive father beat him on various occasions throughout his childhood. Basilio realized that he was gay at around age 15 and began making connections on social media with other LGBT people, some in Guatemala, most in Mexico. In 2014, when Basilio was 18, his adoptive father learned of his sexual orientation from looking at messages on Basilio's phone:

My father found all my conversations on the phone. He started to beat me. I was bleeding from the nose, the mouth. He was saying, 'What, so you're a faggot, so you like men.' I tried to claim the conversations belonged to a school friend [who was using my phone]. My father grabbed me by the neck. He was trying to strangle me. [After the beating] I had bruises all over my legs. I stayed in the house for weeks. I stopped going to school.<sup>244</sup>

Basilio A. fled home to escape the violence, moving to Guatemala City at age 19. For a month, he slept under a bridge. When a market vendor learned Basilio was homeless, she invited him to stay with her family, but there, he said, "Her sons forced me to have sex with them. I was a sex slave. The lady knew."<sup>245</sup> He eventually fled to Mexico.

Carlitos B., 23-year-old non-binary person from Chiquimula who was assigned female at birth, was subjected to various forms of violence and discrimination, including sexual assault by a neighbor, described below. Family violence ultimately convinced Carlitos B. they could not safely remain in Guatemala.

I really left the country because one of my brothers tried to abuse me. It was the worst, because I could have never imagined a member of my family could have hurt me.<sup>246</sup>

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<sup>244</sup> Human Rights Watch interview with Basilio A., Tijuana, January 31, 2020.

<sup>245</sup> Ibid.

<sup>246</sup> Human Rights Watch interview with Carlitos, B., Los Angeles, December 9, 2019.

Carlitos B. described how “Herman,” about nine years older than Carlitos, had been physically abusive for years: “He liked to beat me since I was nine years old. It was always because I was different.”<sup>247</sup> When Carlitos was 16, Herman threatened to sexually assault them.

I was in the house; I had just come home from high school. [My brother] said ‘I was waiting for you, people told me they saw you with a girl, are you a dyke, you like girls?’ I didn’t answer. He grabbed me by the neck and said, ‘If you’re a dyke, I’m going to make you a woman.’ I kicked him in the stomach and took off running. I went to my aunt’s house and told her. She told me to stay there until my mom came home. But when she told my mom, my mom said, ‘He’s the oldest, he needs to correct his siblings.’<sup>248</sup>

The second time Herman threatened to sexually assault Carlitos B., Carlitos was 19 years old.

I arrived home and I was alone making food. He arrived... and I said, ‘I’m leaving.’ He said, ‘Why are you leaving, you’re afraid of me?’ He started to beat me hard. He said, ‘Today I’m going to make you a woman.’ I hit him in the head. Then he came with a piece of wood, and said ‘I’m going to kill you.’<sup>249</sup>

Herman eventually stopped the beating, and afterwards, Carlitos’s sister convinced them to file criminal charges against Herman. When Carlitos first went to the police station, police officers laughed at their gender expression, they recalled, but some neighbors who were aware of the abuse came to Carlitos’ defense. “They arrested him because the neighbors also came and said, ‘If you leave him, he’s going to kill her.’”<sup>250</sup>

Carlitos B. moved out of their mother’s house and rented a room while the case against Herman proceed through the court. Three years later, a court in Chiquimula sentenced

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<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

<sup>250</sup> Human Rights Watch interview with Carlitos, B., Los Angeles, December 9, 2019.



Herman to five years in prison. However, Carlitos B.’s mother paid a bond which allowed Herman to receive a commuted sentence of five years on parole with no time served in prison, a possibility Guatemala’s penal code provides in some cases when sentences are five years or less. Carlitos B. concluded, “I thought that the law would protect me, but there is no law that protects LGBT people.”<sup>251</sup>

The lack of protection ultimately led Carlitos B. to flee Guatemala. They first went to El Salvador while the case against their brother was progressing through the courts, “because I didn’t want to be there [Guatemala] anymore.”<sup>252</sup> Carlitos B. hoped to continue their studies in El Salvador, but could not afford it, so they worked for six months at a low-paying job. They came back to Guatemala for their brother’s sentencing. Afterward, they recounted:

After the last court date, my mother was saying that I was no longer her daughter, that I should forget she was my mother and forget my family. I couldn’t afford to be in El Salvador anymore and then I heard about the caravan from Honduras. I only had 800 quetzales (US\$104) left. And then the caravan passed through Chiquimula and I went.<sup>253</sup>

Eddie, a 24-year-old trans woman in Huehuetenango, said that when she was 15, her mother told her to stop being a “faggot” and threw an iron at her, hitting her in the side of the head and causing bleeding that required hospital treatment. Her mother kicked her out of the house for two weeks after attacking her, and she stayed with her father. After two weeks, she asked to return home, and her mother agreed.<sup>254</sup>

### *Violence by Gangs and Members of the Public*

Street gangs, including the two factions of the 18 and Mara Salvatrucha 13 (MS-13) are active throughout Guatemala, especially in urban areas.<sup>255</sup> Three LGBT Guatemalans told Human Rights Watch they experienced violence or death threats clearly linked to gangs,

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<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Human Rights Watch interview with Eddie P. (pseudonym), Huehuetenango, August 5, 2019.

<sup>255</sup> “Guatemala Profile,” InSight Crime, <https://www.insightcrime.org/guatemala-organized-crime-news>.

while a fourth experienced extortion and threats that she assumed came from gangs, although the perpetrators did not identify themselves as such.

Kennedy W., a trans woman from the department of Izabal, whom Human Rights Watch interviewed when she was applying for asylum in the United States, fled home due to family rejection at age 11. She met a group of older trans sex workers in Guatemala City who she said sexually exploited her for the next 14 years, pimping her out to clients and pocketing their payments. When Kennedy W. was 16 years old, she was raped by seven men whom she identified as gang members, resulting in injuries so severe she had to be hospitalized for 18 days. “They came after me because my brother was a rival gang member,” she told Human Rights Watch.<sup>256</sup>

When Kennedy W. managed to leave those exploiting her and began doing sex work on her own at age 25, gangs, and police officers linked to gangs, extorted her, regularly taking almost all the money she made. Kennedy told Human Rights Watch:

If I lost my asylum case and had to go back to Guatemala, I think I would be assassinated. Because you have to work your whole life to pay extortion money, and I wouldn't do it.<sup>257</sup>

Miriam D. of Organización Trans Reinas de la Noche (OTRANS), which works with trans sex workers, described how she fled to Mexico in 2016 after gang members extorted her and threatened to kill her for not paying. She said gang members had already killed other trans women in Quetzaltenango, and she took the threats seriously. When she got to Mexico, she was not aware of how to apply for asylum, and after three days there, she was deported.<sup>258</sup>

Mynor E., a non-binary person from Puerto Barrios, Izabal, who uses male pronouns, said that in May 2019, gang members attacked him and attempted to extort money from him, prompting him to flee to the United States and seek asylum:

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<sup>256</sup> Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

<sup>257</sup> Ibid.

<sup>258</sup> Human Rights Watch interviews with Miriam D., Quetzaltenango, August 7, 2019, and by telephone, August 4, 2020.

I came [to the United States] because they threatened me. Two men beat me up in the house. They called me a ‘fucking faggot’ [and said], ‘You’re going to die if you don’t pay us.’ I didn’t have the money they asked for, and I knew they were going to kill me if I didn’t pay them. I had seen this happened to other people who were extorted.

They said they knew where I lived, where I went, they already knew everything. They wanted 10,000 quetzales (about US\$1,300).

It hurts, because I left my mom and my family. I never even usually left my department [Izabal]. I never wanted to leave my family.<sup>259</sup>

Alé D., a 32-year-old trans woman from Guatemala City, left Guatemala in 2018 due to extortion and threats—she believed by gang members—and an inadequate and discriminatory police response. She recounted:

I’m a fashion designer and makeup artist. I received a lot of calls [from one number], and when I answered, someone first asked for makeup treatment, but then started trying to extort me.... He called me names like faggot, son of a bitch, when he called me. ‘We know where you live, we’re going to kill you, we know which stop you get off and that you walk two blocks.’<sup>260</sup>

In November 2018, Alé attempted to file a complaint at a police station in the Trebol neighborhood of Guatemala City.

I explained that I was receiving death threats, that I was afraid. They asked for evidence. I showed them the calls on my phone, showed them the number that called me. They called the number, and there was no answer. They said, ‘We can’t do anything for you.’ I said, ‘But here’s the number.’ They said, ‘No, we can’t do anything for you, get out.’ I saw another woman come in and they wrote down her statement without her bringing in any

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<sup>259</sup> Human Rights Watch interview with Mynor E., Los Angeles, December 12, 2019.

<sup>260</sup> Human Rights Watch interview with Alé D., Washington, DC, December 5, 2019.

evidence. I came back and said, ‘Why can’t you take my case?’ and they said, ‘Get out, goddamn faggot.’ They never wrote down my complaint.<sup>261</sup>

Alé said she stopped answering the calls, but the person then began harassing her through a fake Facebook profile, continuing to threaten her life. She began planning to leave Guatemala.

I had my little tailor shop there, my two mannequins. I didn’t know what to do, the police didn’t help me at all. I was 32, I had my life already established. I didn’t want to leave, running from my country, my land, where I was born. You leave and you are alone.<sup>262</sup>

Alé had already been a victim of violence. In 2013, three men attacked her when she went to Taco Bell for a late-night snack after performing at a drag show, still dressed in women’s clothing.

They were drunk, three of them, and they started to insult me, then beat me up... They were saying ‘Faggot, son of a bitch, you all should be dead.’ I talked back, and that’s how the fight started. One of them stood up and pull off my wig. The other two both jumped on me. They hit me with a bottle, on the forehead, on the back. I had the two cuts from the bottle, and other bruises, and no one did anything to help me. It was three against one, I couldn’t do anything.... No one defended me. I was knocked unconscious and taken to the hospital.<sup>263</sup>

The attack against Alé in Taco Bell, like other cases of violence against LGBT people that Human Rights Watch documented, was apparently not linked to gangs, but to hostile members of the public. Gay activist Juan Pablo Escalante, from Huehuetenango department, said that many hate crimes have nothing to do with gangs: “Hate crimes in Huehue are by ordinary civilians, sometimes organized. Their intention is to erase what is not normal.”<sup>264</sup>

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<sup>261</sup> Human Rights Watch interview with Alé D., Washington, DC, December 5, 2019.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> Human Rights Watch interview with Juan Pablo Escalante, Huehuetenango, August 5, 2019.

Iván R., 31, survived a murder attempt in 2014 in Guastatoya, El Progreso department. Iván R. told Human Rights Watch that he “used to be trans but now I’m afraid,” and now uses male pronouns. A beautician by trade, Iván had performed as Paquita La Del Barrio, a Mexican singer who has become a gay icon, in a drag show in the town of Usumatlán, Zacapa department, after the town festival. After the show, at around 2 a.m., he was waiting for two friends on a street corner when two motorcycles, each carrying two people, pulled up. Iván R. recounted:

The motorcycles stopped in front of me and they said: ‘Hello Paquita’. And I said: ‘Hello’... When I turned to look, a guy was aiming at me with a gun.... I could only see half of their faces, I didn’t know them. They shot me. After they shot me four times—twice in my leg and twice in my abdomen—I tried to run, but I couldn’t. I fell and turned around and he was aiming at me with the gun and it only did ‘tsk-tsk’; it was jammed. I thought: ‘This is it for me.’ I told them, ‘Don’t shoot me.’ He [then] changed the magazine, aimed at me again, but it didn’t shoot. It only did ‘tsk’ again.<sup>265</sup>

At that moment, other people leaving the festival approached, and the motorcyclists fled.

Iván R. was hospitalized for 10 days, undergoing surgery to remove the bullets. Persistent leg pain related to the shooting made it impossible to work on his feet, and Iván R. was also afraid to leave home, causing him to give up his salon.

I spent two years at home, not even going to open the door out of fear. I had a lot of anxiety. I kept hearing the sound of the gun firing, all around me. I made *tamales* and *chuchitos* [Guatemalan tamales without filling] in my home, and my sisters helped me out by selling them.<sup>266</sup>

Iván had not received threats before the shooting and did not know who his attackers were, but told Human Rights Watch, “I think it’s about machismo.”<sup>267</sup> In 2016, after recovering physically and mentally, he opened another salon in a different town, in nearby

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<sup>265</sup> Human Rights Watch interview with Iván R., Guastatoya, El Progreso, August 15, 2019.

<sup>266</sup> Human Rights Watch interview with Iván R., Guastatoya, El Progreso, August 15, 2019.

<sup>267</sup> Human Rights Watch telephone interview with Iván R., August 4, 2020.

Zacapa department. But in April 2017, unknown assailants shot at the salon.<sup>268</sup> Fearing for his life, Iván fled to Costa Rica for a month. He opened yet another salon in a different town in Zacapa in 2018, but was plagued by text messages extorting money and threatening to kill him if he didn't pay. Iván R. filed a police report, but to his knowledge the police did not investigate.<sup>269</sup> He told Human Rights Watch, "I keep working, but every day I live in fear."<sup>270</sup>

Estuardo Juárez, an activist with the LGBT rights organization Lambda, said that in one case Lambda had handled, community members in a village in San Juan Sacatepéquez expelled a 17-year-old boy when they found out he was gay. The boy had come to the village to live with his grandparents because his parents did not accept him. According to Juarez:

The community organized itself and wanted to burn the house. The grandparents went out and talked to the people, and the boy managed to flee. People take justice into their own hands in Guatemala.<sup>271</sup>

Carlitos B., a non-binary 23-year-old from Chiquimula, said that a neighbor raped them when Carlitos was eight years old in an assault that bore signs of "corrective" rape.

I went out to buy tortillas. The man, I always noticed he was looking at me, but I was little and didn't really pay attention. That day, he grabbed me by force and took me to his house. He said, 'Why do you always dress like a boy?' I always wore my brother's clothes. He said, 'If you tell your father I'm going to kill you.' He took off my clothes and he raped me. While we were in that room, his two nephews came in and asked, 'What are you doing?' He said, 'Shut up, you're going to get a piece, too.' So they all raped me.... The man cleaned me up afterwards and I just went home and went to sleep.<sup>272</sup>

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<sup>268</sup> Photos of the salon after the attack are on file with Human Rights Watch.

<sup>269</sup> Human Rights Watch interview with Iván R., Guastatoya, August 15, 2019.

<sup>269</sup> Ibid.

<sup>270</sup> Human Rights Watch telephone interview with Iván R., August 4, 2020.

<sup>271</sup> Human Rights Watch telephone interview with Estuardo Juarez, December 10, 2019.

<sup>272</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

## *Violence and Harassment by State Security Forces*

Human Rights Watch interviewed 10 people who recounted incidents in which state security agents beat them, demanded sex from them, humiliated them, discriminated against them, or harassed them because of their presumed sexual orientation or gender identity. Most of the abuses did not seem to represent top-down orders to target LGBT people, but rather, abuses of power by security officers who know they are not likely to be held accountable.

Most cases of security force abuses reported by LGBT Guatemalans were attributed to police officers. Raya E., a trans woman in Guatemala City, described multiple instances of police abuse. In early 2019, she said, she was walking in Zone 13 when she saw police aggressively detaining a man. The police saw that she was watching and called her over. Then, she said, “They forced me to the ground and violently opened my legs. ‘You’re a man! Give us your bag!’” They took her money and let her go, Raya E. said.<sup>273</sup>

Raya E. was already familiar with police violence. In 2017, she was having a drink with a trans woman friend at a bar at around 11:30 p.m. when police officers began harassing them.

Police officers showed up and started bothering us. The police started hitting my friend and they pulled her wig off and started throwing the wig from one police officer to the other.... They wanted to put my friend in the patrol car but I stopped a taxi on the street and we quickly got in.<sup>274</sup>

Raya E. had also been assaulted by police while standing on the street with another trans friend, in 2014 or 2015.

While I was talking with a trans friend, transit police hit her with a baton. I asked why they were hitting her, because we weren’t doing anything. A police officer hit me on my jaw and for the next two weeks, I could only drink liquids through a straw. He threatened to kill me.<sup>275</sup>

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<sup>273</sup> Human Rights Watch interview with Raya E., Guatemala City, August 12, 2019.

<sup>274</sup> Ibid.

<sup>275</sup> Human Rights Watch interview with Raya E., Guatemala City, August 12, 2019.

Juan C., a 24-year-old gay man, described sexual assault at the hands of police in Huehuetenango.

In July 2017, a police patrol car stopped me on the street around midnight. There were four police officers. They shouted at me and then they put me up against the wall to check me. They realized I was gay and told me that I was going to come with them to take a ride in the patrol car. They put me in the back. When we stopped, three of them got out and one stayed inside with me. He made me perform oral sex on him. Afterwards, they dropped me off at the place where they picked me up.... There was nothing I could do [but accept it], otherwise they could have taken me by force.<sup>276</sup>

Mynor E., who is non-binary and uses male pronouns, said that one night in Puerto Barrios when he went out dressed in women's clothing, together with a group of trans woman, police pepper-sprayed the group while they stood on a corner, ordering them to go away.<sup>277</sup>

Police have raided several LGBT gatherings, including a party at the Gente Positiva headquarters in Guatemala City's Zone 1 after the Pride festival in the early morning hours on July 21, 2019.<sup>278</sup> Gaby Dávila, director of Gente Positiva, said police conducting the raid threatened to hit her brother Aldo Dávila, the former director of the organization, who had recently been elected to Congress. She said police used pepper spray to disperse revelers. Activists immediately called the Human Rights Ombudsperson's Office to file a complaint.<sup>279</sup> They followed up with a police complaint, but according to Dávila, the officers responsible for the abuses were never held accountable.<sup>280</sup>

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<sup>276</sup> Human Rights Watch interview with Juan C., Huehuetenango, August 5, 2019.

<sup>277</sup> Human Rights Watch interview with Mynor E., Los Angeles, December 12, 2019.

<sup>278</sup> Inter-American Commission on Human Rights, "IACHR Expresses Concern About Excessive Use of Police Force Against LGBTI People in Guatemala" ("CIDH expresa preocupación por excesivo uso de la fuerza policial contra personas LGBTI en Guatemala"), August 7, 2019, <https://www.oas.org/es/cidh/prensa/comunicados/2019/196.asp> (accessed September 11, 2020).

<sup>279</sup> Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019; Celeste Mayorga, "Police Repress LGBT Pride parties and Threaten Gay Congressman" ("Policía reprimió fiestas del Orgullo LGBT y amenazó a diputado gay"), *Presentes*, July 22, 2019, <https://agenciapresentes.org/2019/07/22/policia-reprimio-fiestas-del-orgullo-lgbt-en-guatemala-y-amenazo-a-diputado-gay> (accessed September 11, 2020). See also Aisling Walsh, "After a Surge in Hate Speech, and Police Raids, Guatemala's LGBTIQ+ Community Fears the Worst is Yet to Come," *OpenDemocracy*, August 6, 2019, <https://www.opendemocracy.net/en/5050/after-a-surge-in-hate-speech-and-police-raids-guatemalas-lgbtqi-community-fears-the-worst-is-yet-to-come> (accessed September 11, 2020).

<sup>280</sup> Human Rights Watch telephone interview with Gaby Dávila, September 3, 2020.



Dávila also said that security agents who are part of a *colectivo multisectorial*, a joint unit of the Prosecutor’s Office and the Ministry of Health responsible for investigating liquor law violations, have abused their powers by harassing people at LGBT-friendly venues. She mentioned one case in April 2019 when 14 police cars pulled up to raid a gay club. Agents wore balaclavas, carried assault rifles, and photographed clients. Although they made no arrests, the raids intimidated LGBT people.<sup>281</sup>

Stacy Velásquez, executive director of the group OTRANS, told Human Rights Watch that LGBT people typically do not file reports against police for violence or harassment because they fear being victimized as a result. “If you file a report against a police officer, he will know that same day who filed a report against him. That makes you afraid that they’ll kill you,” Velásquez said.<sup>282</sup>

In two cases, interviewees mentioned abuses by members of the Guatemalan Armed Forces. Kennedy W., a trans woman, described being forced to perform oral sex on six soldiers.<sup>283</sup> Gaby Dávila, the executive director of the HIV organization Gente Positiva, which advocates for respect for LGBT rights but is also involved in other human rights mobilizing, described instances of apparent surveillance of Gente Positiva by soldiers in April 2018 and January 2019.<sup>284</sup>

## Discrimination in Guatemala: A Pathway to Life on the Margins

LGBT people in Guatemala in practice receive little protection from discrimination. Some, especially those who are trans and gender non-conforming, are pushed into the social and economic margins by a lifetime of discrimination, including in schools and in access to employment, as highlighted in a 2020 report by Guatemala’s Human Rights Ombudsperson’s Office.<sup>285</sup>

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<sup>281</sup> Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019.

<sup>282</sup> Human Rights Watch interview with Stacy Velásquez, Guatemala City, May 10, 2019.

<sup>283</sup> Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

<sup>284</sup> Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019.

<sup>285</sup> Procuraduría de los Derechos Humanos de Guatemala, *Annual Report on Activities and the Situation of Human Rights, 2019 (Informe Anual Circunstanciado De Actividades Y De La Situación De Los Derechos Humanos, 2019)*, <https://t.co/681PONQH80?amp=1>, pp. 249-252.

Discrimination on the basis of sexual orientation and gender identity is a harm in itself—it violates international human rights law—and is also harmful in that it limits LGBT people’s opportunities and life choices, forcing many into poverty that, as for many impoverished Guatemalans, is compounded by violence.<sup>286</sup> Gangs often targets those living in low-income neighborhoods with violence. Those who do sex work—often one of the only sources of income available to trans people as a result of discrimination at school and in the workplace—are especially likely to face violence from gangs, the police, and clients.

### *Education Discrimination*

No law explicitly prohibits discrimination against LGBT students in Guatemala, and the education ministry has no guidelines aimed at preventing bullying based on sexual orientation or gender identity. Thirteen of the 52 LGBT Guatemalans that Human Rights Watch interviewed said that they experienced bullying and discrimination in schools for demonstrating signs of non-normative sexuality or gender expression, echoing the experiences documented in other studies.<sup>287</sup> For trans people, bullying and discrimination led in some cases to denial of the right to education altogether.

Carlitos B., a non-binary 23-year-old from Chiquimula, faced bullying and discrimination in several schools, eventually causing them to drop out. Their experiences with bullying began in primary school, where one teacher in their all-girls school, “told the other girls not to hang out with me,” Carlitos recalled. Their schoolmates’ parents told their daughters the same thing, leaving Carlitos with few friends.<sup>288</sup>

On one occasion, a student’s stepfather and cousins physically assaulted Carlitos B. on school premises. Carlitos recounted being made to feel they were to blame for the incident:

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<sup>286</sup> Nelly Erandy Reséndiz Rivera, “Daily Violence, Marginalization, Social Cleansing and Gangs in Guatemala” (“Violencia cotidiana, marginación, limpieza social y pandillas en Guatemala”), *URVIO, Revista Latinoamericana de Estudios de Seguridad*, no. 19:2016, Facultad Latinoamericana de Ciencias Sociales, accessed August 6, 2020, doi:10.17141/urvio.19.2016.2414.

<sup>287</sup> María Isabel Carrascosa Coll, “Homophobic Bullying” (“Bullying homofóbico”), *Plaza Pública* (Guatemala), July 2, 2014, <https://www.plazapublica.com.gt/content/bullying-homofobico> (accessed October 4, 2020); Carlos Caceres et. al., “‘Era como ir todos los días al matadero...’ El bullying homofóbico en instituciones educativas públicas en Chile, Guatemala y Perú,” November 2013, accessed September 11, 2020, doi:10.13140/RG.2.1.3291.8888.

<sup>288</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

I had a girlfriend at that school. But the kids told her parents. And her stepfather and her two cousins beat me when I was leaving school. The stepfather said, ‘What are you doing with my stepdaughter?’ The cousin grabbed my backpack and threw me to the ground and the man was kicking me on the face and busted my lip open.<sup>289</sup>

Carlitos transferred to a different school the following year, but this did not resolve their problems. There, when they tried to wear boys’ clothes, Carlitos said, “the school director said, ‘I can’t accept this because of the reputation of my school.’”<sup>290</sup> The discriminatory uniform policy combined with the cost of secondary education led them to drop out of school.<sup>291</sup>

Kennedy W., a trans woman from Izabal, said that from the age of nine she had faced attempted sexual assault and school bullying as a result of her gender expression. She left school at age 10, having only completed third grade:

A primary school teacher tried to touch me when I was very little. I told my mother. Nobody listened to me, even my mother, she beat me for lying. The other students threw me in a swamp, beat me, and broke my arm. It’s what happens when you look like this. At 10 years my father told me he wasn’t going to [pay to] educate me because I was an embarrassment.<sup>292</sup>

Martin Y., an 18-year-old trans man, was also forced out of school because of transphobia:

In January 2018, my mom and I went to talk with the director of my school ... [My mom] explained that I am a trans boy, that we were processing my name change, and that we wanted for me to be able to use the masculine school uniform. The director got mad and said that if I wanted to continue to go to school, that I had to go as a woman and with the female uniform. I asked if I could think about it for a month. I wanted to continue studying.

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<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

<sup>291</sup> Ibid.

<sup>292</sup> Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

So in February 2018, we met with the director again and I told her that, OK, I'd continue to use the female uniform. But they told us that there was no space anymore, and that I couldn't matriculate. I knew it wasn't true. I looked for other schools but none wanted to accept me. They said that it was because of 'school policy' that they couldn't accept me.

I sometimes went to the school to pick up my brother and to see friends, those who know of my transition. And then, in March 2018, a school administrator told me that the director had ordered that I was no longer allowed to go near the school, because I 'was confusing the kids' and that parents had complained about that.<sup>293</sup>

Martin Y. said his brother dropped out of school later that year after being bullied about having a trans brother.<sup>294</sup>

Others who stayed in school nonetheless endured treatment that compromised their right to education. Basilio A., a gay man from a rural area near Cobán, was 18 years old when his classmates and teachers learned of his sexual orientation. Their bullying, compounded by violence at the hands of his adopted father, described above, led him to consider suicide.

I wanted to kill myself.... I felt terrorized, I didn't know what to do. I was studying in *básico*. My classmates all insulted me, my teachers laughed at me, 'What, you like men?' I thought about jumping off a bridge.<sup>295</sup>

Mynor V., a non-binary person from Puerto Barrios, said that they were visibly gender non-conforming from a young age and that when they were around 11, in the fourth grade, a classmate touched their breasts. In response, the teacher beat Mynor, they said: "He beat me for having let the other kid do it."<sup>296</sup> Ofelia G., a 21-year-old lesbian in Jalapa, described how she and other lesbian friends suffered sexual harassment from classmates:

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<sup>293</sup> Human Rights Watch telephone interview with Martin Y., June 19, 2019.

<sup>294</sup> Ibid.

<sup>295</sup> Human Rights Watch interview with Basilio A., Tijuana, Mexico, January 31, 2020.

<sup>296</sup> Human Rights Watch interview with Mynor V., Los Angeles, December 12, 2019.

Some boys would throw *jocote* seeds at us, saying we were lesbians....  
There are always comments like, ‘You need to try a man.’<sup>297</sup>

Geraldo R., a 23-year-old gay man from Jalapa, said classmates had bullied him in school for his “effeminate manner,” but teachers viewed him, not his classmates, as the problem, sending him to school psychologists to attempt to change him.<sup>298</sup>

Raya E., a trans woman from Chimaltenango who identified as gay when she was a student, recollected her experience with a school psychologist at age 16 or 17.

In my secondary school there was a psychologist. When I made ‘feminine’ gestures, she called me over to tell me not to behave like that. She told me to behave like a man because I was a man and not a woman.... She called in my mother to correct me. My mother scolded me and hit me.<sup>299</sup>

### *Employment Discrimination*

LGBT Guatemalans who are forced out of school or whose success in school is compromised by bullying and discrimination are already at a disadvantage in the job market. This disadvantage is compounded by employment discrimination based on gender identity and sexual orientation. Lambda Association describes the work environment in Guatemala as “extremely hostile” for LGBT and intersex people.<sup>300</sup> A 2019 survey of 94 LGBT people in Guatemala City found that 22 percent of respondents were certain they had been denied employment based on their sexual orientation or gender identity and another 23 percent had been denied employment for reasons that they said may have been linked to their sexual orientation or gender identity. Thirty-one percent of interviewees had experienced discriminatory treatment at work.<sup>301</sup>

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<sup>297</sup> Human Rights Watch interview with Ofelia G., Jalapa, August 13, 2019.

<sup>298</sup> Human Rights Watch interview with Geraldo R., Jalapa, August 13, 2019.

<sup>299</sup> Human Rights Watch interview with Raya E., Guatemala City, August 12, 2019.

<sup>300</sup> Asociación Lambda, *Sin Raíz*, pp. 30, 55 (on file with Human Rights Watch).

<sup>301</sup> Proyecto Convivimos, *Violence in the Workplace Against Lesbians, Gays, and Trans People in Guatemala City (Violencia en espacios laborales hacia lesbianas, gays, y personas trans en la ciudad de Guatemala)*, October 2019, <https://www.flacso.edu.gt/publicaciones/wp-content/uploads/2019/10/Violencia-en-espacios-laborales-LGBTI.pdf> (accessed September 11, 2020), pp. 52-54, 61.

Geraldo R., a 23-year-old gay man in Jalapa, told Human Rights Watch that when he was 17, his boss at a coffee shop not only fired him but also outed him to his mother after finding out that he was gay.

They fired me for being gay, at a coffee shop. A gay guy came and said to me, ‘Hello, *amiga* [girlfriend]!’ My boss asked the guy, ‘Why did you call him *amiga*?’ He said it was because I was gay, and she asked me if it was true, and I said yes. And she started to treat me badly. It was six years ago, on June 3, 2013. I remember because it was so impactful. She told me I should go to church, and she called my mom.<sup>302</sup>

Carlitos B., a non-binary 23-year-old from Chiquimula, said that when they were 17, they applied for a job at a hardware store. “The man said, ‘We don’t give work to people like you, because it gives my business a bad reputation with my clients.’”<sup>303</sup> Carlitos B. eventually obtained employment in a shoe store owned by their sister’s friend.

Trans women are particularly vulnerable to employment discrimination. Yolanda U., an activist with the Organization REDMMUTRANS (Multicultural Network of Trans Women), summed up: “We don’t have access to employment in Guatemala. We are questioned about our identity, not our qualifications.”<sup>304</sup> At times, the discrimination is blatant, as Alé D., a trans woman in Guatemala City, experienced:

I applied for a job in a restaurant. The boss told me, ‘I can’t give work to a trans woman. People are sensitive, they don’t like that people like you touch their food, they are disgusted by people like you.’

Raya E., a trans woman in Guatemala City, said when she was fired from her job distributing newspapers, a cisgender female colleague told her the supervisor fired her because she was trans.<sup>305</sup> Bárbara Herrarte, a 53-year-old trans woman and member of a

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<sup>302</sup> Human Rights Watch interview with Geraldo R. (pseudonym), Jalapa, August 13, 2019.

<sup>303</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

<sup>304</sup> Human Rights Watch interview with Yolanda U. (pseudonym), Guatemala City, May 10, 2019.

<sup>305</sup> Human Rights Watch interview with Raya E. (pseudonym), Guatemala City, August 12, 2019.

Redmmutrans Guatemala, told Human Rights Watch that she resigned from her job at a fast food restaurant after being forced to wear men’s clothing.<sup>306</sup>

Noelia A., in Guatemala City, believes she was denied multiple entrepreneurship opportunities due to anti-trans discrimination. A seasoned cook who had worked in restaurants, Noelia had already reached an agreement with the owner of a property that she wanted to rent to establish her own small restaurant. When she went to sign the contract, however, she said:

He came with his son, and the son looked at me and then spoke [privately] to his father, and then the father told me that he couldn’t rent me the place, that he’d already given it to another woman. It’s always the same—rejection and discrimination.<sup>307</sup>

Noelia A. also described being denied a bank loan. “They told me that they couldn’t give a loan to a trans woman.... That was three years ago. I stopped looking for loans because of the shame.”<sup>308</sup>

Dolores F., a trans woman living with HIV in Guatemala City, described being sabotaged in business due to bias:

I am in business, I make accessories. A few years ago [in 2015] I had a problem with a neighbor of my shop.... She said that my accessories were contaminated and there were all these rumors and people [stopped] buying from me. I had to close my business.<sup>309</sup>

At the time Human Rights Watch interviewed them, Raya E., Noelia A., and Dolores F., were doing sex work to stay afloat.

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<sup>306</sup> Human Rights Watch interview with Bárbara Herrarte, Guatemala City, May 10, 2019.

<sup>307</sup> Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

<sup>308</sup> Ibid.

<sup>309</sup> Human Rights Watch interview with Dolores F., Guatemala City, August 12, 2019.

## IV. Honduras

I am considering leaving [Honduras]. But I don't have the financial means to buy a plane ticket. I also don't want to risk my life [traveling by land]. If I stay here, I will at least get a dignified burial. But what if I end up on the street?

—William Alejandro Martínez, trans man interviewed in Tegucigalpa, Honduras, May 16, 2019, who is now seeking asylum in Spain

### Background

Honduras is the second poorest country in Central America and is marked by staggering income inequality.<sup>310</sup> The Economic Commission for Latin America and the Caribbean (ECLAC), a regional United Nations commission tasked with contributing to the economic development of Latin America, estimated that in 2018, 56 percent of the population lived in poverty and 19 percent in extreme poverty.<sup>311</sup> The Honduran government estimated these same numbers to be 62 percent in poverty and 39 percent in extreme poverty.<sup>312</sup>

Poverty is one contributing factor to Honduras's astronomical rates of violence.<sup>313</sup> Gangs including Mara Salvatrucha-13 (MS-13) and the two factions of the 18th Street Gang (Barrio 18) have significant power and carry out acts of violence including murder, extortion, kidnapping, human trafficking, and intimidation.<sup>314</sup> In 2019, Honduras had 41.2 homicides

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<sup>310</sup> Steven Dudley, "Honduras Elites and Organized Crime: Introduction," InSight Crime, April 9 2016, <https://www.insightcrime.org/investigations/honduras-elites-and-organized-crime-introduction> (accessed September 11, 2020); Central Intelligence Agency, *The World Factbook: Honduras*, May 20, 2020, <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html> (accessed September 11, 2020); IndexMundi, Income distribution, "GINI Index (World Bank Estimate) - Country Ranking," December 28, 2019, <https://www.indexmundi.com/facts/indicators/SI.POV.GINI/rankings> (accessed September 11, 2020).

<sup>311</sup> Economic Commission for Latin American and the Caribbean (ECLAC), *Social Panorama of Latin America 2019*, [https://repositorio.cepal.org/bitstream/handle/11362/44989/1/S1901132\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/44989/1/S1901132_en.pdf) (accessed September 11, 2020), p. 96.

<sup>312</sup> Ibid.

<sup>313</sup> Association for a More Just Society, "Why is Honduras so Violent? Drugs, Gangs, Corruption, and Impunity," September 2019, <https://www.ajs-us.org/wp-content/uploads/2019/09/why-is-honduras-so-violent.pdf> (accessed September 11, 2020), p. 3.

<sup>314</sup> US Department of State, "Honduras 2019 Human Rights Report," February 2020, <https://www.state.gov/wp-content/uploads/2020/02/HONDURAS-2019-HUMAN-RIGHTS-REPORT.pdf> (accessed September 11, 2020). See also generally, Insight Crime, *Gangs in Honduras*, April 21, 2016, <https://www.insightcrime.org/images/PDFs/2015/HondurasGangs.pdf> (accessed September 11, 2020).



per 100,000 inhabitants, one of the highest rates in the world.<sup>315</sup> Local human rights and humanitarian organizations have documented cases of homicides that go unreported to authorities because victims fear reprisals—including extrajudicial killings—from criminal organizations.<sup>316</sup> Impunity for reported incidents of violence is also the norm: in February 2019, Honduras’s human rights commission stated that failure to conduct meaningful investigations resulted in impunity for 90 percent of murders in the country.<sup>317</sup>

In 2009, a military coup ousted President Manuel Zelaya, the first blow in a sustained attack on democratic institutions that also increased military influence in policing.<sup>318</sup> Civil society leaders, human rights activists, student activists and journalists are subject to intimidation by state agents and criminal organizations.<sup>319</sup> The United Nations special rapporteur on the independence of judges and lawyers has raised questions about the independence of Honduras’ judiciary.<sup>320</sup> The justice system lacks adequate funds, equipment and staff, rendering it ineffective and vulnerable to intimidation, corruption, political manipulation, and patronage. Organized criminal elements have exercised influence on the outcomes of some court proceedings.<sup>321</sup>

Honduras is a transit point for drug trafficking from Colombia and Mexico to North America, and according to the UN Office on Drugs and Crime, in the wake of the 2009 coup,

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<sup>315</sup> Parker Asmann and Eimhin O’Reilly, “Insight Crime’s 2019 Homicide Round-Up,” January 28, 2020, <https://www.insightcrime.org/news/analysis/insight-crime-2019-homicide-round-up> (accessed September 11, 2020). In the past five years, Honduras’ homicide rate has consistently been one of the highest in the region: it was 57.5 in 2015, 56.5 in 2016, and 41.7 in 2017. United Nations Office on Drugs and Crime, “Global Study on Homicide 2019,” <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>, searching “homicide data” for “Honduras” and “homicide rate.”

<sup>316</sup> *Ibid.*, p. 15.

<sup>317</sup> “Honduras Ombudsman: Impunity is a National Problema That Affects Social Peace” (“Ombudsman Hondureño: La impunidad es un problema de país que afecta la paz social”), CONADEH, February 15, 2019, <https://www.conadeh.hn/?p=2514> (accessed September 11, 2020).

<sup>318</sup> International Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America*, April 6, 2017, [https://d2o71andvipowj.cloudfront.net/062-mafia-of-the-poor\\_o.pdf](https://d2o71andvipowj.cloudfront.net/062-mafia-of-the-poor_o.pdf), p. 4.

<sup>319</sup> Immigration and Refugee Board of Canada, *Honduras: Information Gathering Mission Report*, February 2018, [https://www.ecoi.net/en/file/local/1429301/1226\\_1523526023\\_ffm-honduras-eng.pdf](https://www.ecoi.net/en/file/local/1429301/1226_1523526023_ffm-honduras-eng.pdf) (accessed September 11, 2020), p. 14.

<sup>320</sup> In August 2019, the United Nations special rapporteur on the independence of judges and lawyers reported that four justices of the Constitutional Chamber of the Supreme Court were removed by Congress for political reasons and noted the lack of transparency in judicial appointments and lack of public scrutiny in the appointment of high officials. United Nations Office of the High Commission for Human Rights, Preliminary Observations About Official Visit to Honduras, Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers, August 22, 2019, <https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24910&LangID=S> (accessed September 11, 2020).

<sup>321</sup> US Department of State, “Honduras 2019 Human Rights Report,” <https://www.state.gov/wp-content/uploads/2020/02/HONDURAS-2019-HUMAN-RIGHTS-REPORT.pdf>.

narcotrafficking flights routed through Honduras notably increased and organized criminals took control of more Honduran territory.<sup>322</sup> The drug trade has corrupted mayors, members of the national congress, and a former president, and US prosecutors have linked current president Juan Orlando Hernández to the drug trade.<sup>323</sup> The National Police has been implicated in cooperating with traffickers moving cocaine or receiving bribes in exchange for ignoring criminal activity.<sup>324</sup>

## Sexual Orientation and Gender Identity in Honduras

### *Legal and Policy Context*

Honduras has no comprehensive civil law prohibiting discrimination on the basis of sexual orientation and gender identity. In 2013, Honduras enacted a penal code that punishes discrimination on several grounds, including sexual orientation and gender identity, as well as public speech that incites “discrimination, hate, persecution, violence or attacks” on the same grounds with up to five years in prison. Additional sanctions apply if the perpetrator is a public official.<sup>325</sup> In response to an information request from Human Rights Watch, the Attorney General’s office stated that four people have been convicted since 2013 on charges related to anti-LGBT discrimination.<sup>326</sup> A new penal code, with lower penalties and narrower categorizing of types of discrimination covered, went into effect in June 2020, although at the time of writing a group of judges had challenged the new code

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<sup>322</sup> United Nations Office on Drugs and Crime, *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, September 2012, [https://www.unodc.org/documents/data-and-analysis/Studies/TOC\\_Central\\_America\\_and\\_the\\_Caribbean\\_english.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf) (accessed September 11, 2020), pp. 32, 37, 65.

<sup>323</sup> Steven Dudley, “Another Day, Another Damning Testimony of Elites by Honduras Trafficker,” *InSight Crime*, March 20, 2017, <https://www.insightcrime.org/news/analysis/another-damning-testimony-elites-honduras-trafficker> (accessed September 11, 2020); Emily Palmer and Benjamin Weiser, “El Chapo Said to Have Given \$1 Million to Honduran President’s Brother,” *New York Times*, October 2, 2019, <https://www.nytimes.com/2019/10/02/world/americas/el-chapo-honduras-drug-trial.html> (accessed September 11, 2020).

<sup>324</sup> “Honduras Ex-Police Chief Faces US Drug Trafficking Charges,” *BBC*, May 1, 2020, <https://www.bbc.com/news/world-latin-america-52502370> (accessed September 11, 2020); Christopher Sherman, Martha Mendoza and Garance Burke, “Honduras’ National Police Chief Helped Cartel Move 1,700 lbs. of Cocaine, Report Says,” *Associated Press*, reprinted in *Chicago Tribune*, January 26, 2018, <https://www.chicagotribune.com/ct-honduras-police-cocaine-20180126-story.html> (accessed September 11, 2020).

<sup>325</sup> Republic of Honduras, Penal Code of 2013, [poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CodigoPenal-ReformaIncluida.pdf](http://poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CodigoPenal-ReformaIncluida.pdf), art. 321.

<sup>326</sup> Republic of Honduras, Ministerio Público, Oficio S.D.G.F. no 480-2020, September 25, 2020; see Annex VII.

before the Supreme Court, arguing that it instituted impunity for abuse of power, in violation of the constitution.<sup>327</sup>

The 2013 penal code also provides for higher penalties for all bias-motivated crimes on grounds including sexual orientation and gender identity, but there are no confirmed convictions. Since 2017, criminal complaint forms have included a box that can be ticked if the victim reporting a crime self-identifies as LGBTI, but the Attorney General's Office reported in response to an information request from Human Rights Watch that a lack of cases indicates "that it is being ignored by the officials receiving the complaints."<sup>328</sup>

Honduras has no law allowing a person to modify their legal name and gender. In 2015 during its Universal Periodic Review at the United Nations Human Rights Council, Honduras accepted several recommendations to address violence and discrimination based on sexual orientation and gender identity. However, it rejected recommendations to pass a proposed Gender Identity Law that would allow for an administrative procedure for name and gender change on official documents.<sup>329</sup> Trans people interviewed by Human Rights Watch described constant challenges related to the mismatch between their appearance and the name and sex marker on their official documents: everyday challenges such as routine banking or buying a long-distance bus ticket, contributed to a sense of perpetual alienation and exclusion.<sup>330</sup>

Honduras's semi-autonomous National Human Rights Commission (*Comisionado Nacional de Derechos Humanos*, CONADEH), established in 2014, houses an Ombudsperson's Office for HIV and Sexual Diversity, but it is under-resourced: its director, Francia Maradiaga, told Human Rights Watch that the office does not have the capacity to investigate individual cases and relies heavily on information from the lesbian human

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<sup>327</sup> Republic of Honduras, Decreto 130-2017, Código Penal (Decree 130-2017, Penal Code), [https://www.tsc.gob.hn/web/leyes/Decreto\\_130-2017.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf), arts. 211-213; "The AJD Presents an 'Appeal of Unconstitutionality Against the New Penal Code'" ("Desde la AJD se llevó a cabo la Presentación de 'Recurso de Inconstitucionalidad contra el Nuevo Código Penal'"), Asociación de Jueces por la Democracia news release, August 6, 2020, <https://juecesporlademocracia.org/desde-la-ajd-se-llevo-a-cabo-la-presentacion-de-recurso-de-inconstitucionalidad-contra-el-nuevo-codigo-penal/?fbclid=IwARoQud2k3SNboLTFHcnWJBqruNWLY6oXPX3beKnxx5sbt6HitTwzDUAQRMA> (accessed September 11, 2020).

<sup>328</sup> Ibid.

<sup>329</sup> ARC International, UPR SOGIESC Database, Honduras (Cycle 2), <https://arc-international.net/global-advocacy/universal-periodic-review> (accessed September 11, 2020).

<sup>330</sup> Human Rights Watch interviews with Pablo B. (pseudonym), Tegucigalpa, May 14, 2019, and Anabel H. (pseudonym), Tegucigalpa, May 16, 2019.

rights organization Cattrachas, which documents human rights violations against LGBT people.<sup>331</sup>

A May 2018 CONADEH report estimated that more than 40 LGBT people had been killed in the year leading up to the report’s publication, although the report did not reach a determination as to how many of the murders were likely to be related to anti-LGBT animus. CONADEH condemned the environment of impunity for anti-LGBT violence and called for the state to bring perpetrators to justice. It also expressed support for a process of legal gender recognition for trans people.<sup>332</sup> In 2019, CONADEH specifically named state security agents as among those responsible for violence against LGBT people.<sup>333</sup> Maradiaga told Human Rights Watch that CONADEH had trained 8,000 members of the National Police on LGBT issues, but that the Military Police—although they engage with and arrest civilians, including LGBT people— had been less open to trainings.<sup>334</sup>

Honduras places transgender women in men’s prisons, which can lead to physical and sexual abuse. A judge informed Human Rights Watch of a case in which a trans woman was raped by her fellow detainees with the complicity of prison guards. The judge said she had informed prosecutors when she became aware of the case, but that they did not investigate. “There’s no way to protect” trans women in men’s prisons, she said.<sup>335</sup>

Honduras’s 2001 Law on Police and Social Affairs establishes a police mandate regarding the “prevention and elimination of disturbances to tranquility, public morality, and proper conduct.”<sup>336</sup> It empowers the National Police to arrest anyone who “goes against modesty, proper conduct and public morals ... and disturbs the neighbors’ tranquility with their

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<sup>331</sup> Human Rights Watch interview with Francia Maradiaga, Tegucigalpa, May 16, 2019.

<sup>332</sup> CONADEH, “Impunity Prevails for Acts of Violence Against Members of Sexual Diversity” (“Prevalen En La Impunidad Acciones De Violencia Contra Miembros De La Diversidad Sexual,” May 17, 2018, <https://www.conadeh.hn/?p=2008> (accessed September 11, 2020).

<sup>333</sup> “At Least 325 LGBTI People Killed in Honduras Since 2009” (“Al menos 325 personas LGBTI asesinadas en Honduras desde 2009), *Deutsche Welle*, July 15, 2019, <https://www.dw.com/es/al-menos-325-personas-lgbti-asesinadas-en-honduras-desde-2009/a-49590145> (accessed September 11, 2020).

<sup>334</sup> Human Rights Watch interview with Francia Maradiaga, Tegucigalpa, May 16, 2019.

<sup>335</sup> Human Rights Watch interview with Mildred López, El Progreso, August 28, 2019.

<sup>336</sup> Republic of Honduras, Legislative Branch, Decree No. 226-2001, *Ley de Policía y Convivencia Social* (Law on Police and Social Affairs), <https://www.tsc.gob.hn/biblioteca/index.php/leyes/63-ley-de-policia-y-convivencia-social> (accessed September 11, 2020), art. 5.

immoral conduct.”<sup>337</sup>The law includes sanctions against particular groups of people, including “vagabonds,” defined as including “street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers.”<sup>338</sup> Human Rights Watch found in a 2009 report that the law was used arbitrarily to justify arrests of transgender women.<sup>339</sup>

In 2005, Honduras passed a constitutional amendment prohibiting the recognition of marriage between people of the same sex, including same-sex marriages contracted in other countries.<sup>340</sup> Honduras also bans adoption by same-sex couples.<sup>341</sup> While lack of access to marriage was not among the factors that led any LGBT asylum seekers interviewed by Human Rights Watch to leave their country, the existence of such an amendment is an indication of state-sponsored homophobia.

### *Social Stigma and Discrimination*

Negative experiences in the family, at school, and during everyday interactions on the streets and in public accommodations contribute to the stigma and discrimination experienced by LGBT people in Honduras.

Lucía P., a 25-year-old transgender woman originally from Comayagüela, told Human Rights Watch that she left home at age 16 because her family did not accept her gender expression. “My parents always criticized homosexual people ... they always said things to me like ‘You have to be like a man,’” she said.<sup>342</sup>

Nina G., a 26-year-old lesbian from Tegucigalpa, said that when she was a teenager, her father expelled her older half-brother from the home after he came out as gay: “My father said to him, ‘You’re not going to contaminate my daughter.’”<sup>343</sup> When Nina herself told her

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<sup>337</sup> Republic of Honduras, Legislative Branch, Decree No. 226-2001, *Ley de Policía y Convivencia Social* (Law on Police and Social Affairs), <https://www.tsc.gob.hn/biblioteca/index.php/leyes/63-ley-de-policia-y-convivencia-social>, art 142 (3).

<sup>338</sup> *Ibid.*, art. 99.

<sup>339</sup> Human Rights Watch, *Not Worth a Penny: Human Rights Abuses Against Transgender People in Honduras*, May 29, 2009, <https://www.hrw.org/report/2009/05/29/not-worth-penny/human-rights-abuses-against-transgender-people-honduras>.

<sup>340</sup> Constitution of Honduras, Decree No. 131, January 11, 1982, modified by Decree 36 of May 4, 2005, [https://www.oas.org/dil/esp/Constitucion\\_de\\_Honduras.pdf](https://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf) (accessed September 11, 2020), art. 112.

<sup>341</sup> “Honduran Parliament Prohibits Adoption by Same-Sex Couples” (“El Parlamento de Honduras prohíbe adopción a parejas del mismo sexo”), *El Nuevo Diario* (Tegucigalpa), August 17, 2018, <https://www.elnuevodiario.com.ni/internacionales/centroamerica/472430-honduras-niega-adopcion-matrimonios-mismo-sexo> (accessed September 11, 2020).

<sup>342</sup> Human Rights Watch interview with Lucía P. (pseudonym), Los Angeles, December 10, 2019.

<sup>343</sup> Human Rights Watch interview with Nina G. (pseudonym), Tegucigalpa, May 15, 2019.

parents she was a lesbian at age 19, “My father insulted me, got angry, and said it was my brother’s fault.” Nina G.’s mother told her that she was possessed by a demon.<sup>344</sup>

William Martinez, a 36-year-old transgender man from Comayagüela, described coming to terms with himself first as a lesbian and then as a trans man. At age 28, he disclosed his identity to his parents, who told him “all the worst things you can say to a homosexual” and then kicked him out of the family home. William S. described his vulnerability after being expelled by his parents:

I was kicked out of my house, with three lempiras (US 12 cents) in my bag. I bought a cigarette and I ran out of money. I didn't know where to go.... I stayed at 24/7 gas stations. I walked long stretches and sat down to talk for hours with the guard. And during the day I visited the few people I knew to be able to eat. A person with whom I got along realized that something was happening to me, asked me, and gave me a place to stay.<sup>345</sup>

Juan Y., a 35-year-old transman who grew up in the Francisco Morazán department, explained to Human Rights Watch that stigma and discrimination are directly related to economic well-being:

When [people] realize that I am biologically female, I suffer more discrimination, for example at the beach or at the pool. I therefore need to choose where to go so as not to expose myself to danger. It has much to do with one’s economic situation: when I have less means, I am more exposed. For example, now I have more money so I can take a car, not the bus, I can work more from home.<sup>346</sup>

## Violence Against LGBT People in Honduras

Given the pervasive nature of crime in Honduras generally, it is not surprising that LGBT people also fall victim to violence. But some cases bear clear indications of anti-LGBT animus, even when it is unclear who has perpetrated such crimes.

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<sup>344</sup> Human Rights Watch interview with Nina G. (pseudonym), Tegucigalpa, May 15, 2019.

<sup>345</sup> Human Rights Watch interview with William Alejandro Martínez, Tegucigalpa, May 16, 2019.

<sup>346</sup> Human Rights Watch interview with Juan Y. (pseudonym), Tegucigalpa, May 17, 2019.

For example, Shakira, a trans woman also known by her nickname “La Moy,” was killed on June 9, 2019 in Choloma, 10 miles north of San Pedro Sula. A person who saw Shakira’s body told a Human Rights Watch researcher that her face was mutilated with a rock, her penis was cut off, and a note was left by her body that said, “[this] is the first one, two more to go.”<sup>347</sup>

Honduras, by some estimates, has the highest rate of murders of transgender people in the world.<sup>348</sup> Other forms of violence against trans people are also common. Human Rights Watch first reported on violence against trans women in Honduras in 2009. At that time we reported on a range of abuses based on gender identity and expression, including rape, beatings, extortion, and arbitrary detentions by law enforcement officials, as well as police inaction and recurrent failure to investigate violence against transgender people.<sup>349</sup>

Such violations persist. Eleven of the 25 LGBT Hondurans whom Human Rights Watch interviewed had experienced some form of violence related to their sexual orientation or gender identity. The story of Perla M., a 29-year-old transwoman from San Pedro Sula, is emblematic of the multiple forms of violence that trans people, and some lesbian, gay, and bisexual people, experience in Honduras. As a child who did not conform to a male gender expression from an early age, Perla was repeatedly targeted. She told Human Rights Watch that her uncle and two of his friends raped her when she was six years old. Two years later, she said, a schoolteacher raped her.<sup>350</sup> Perla began doing sex work at age 15.<sup>351</sup> At age 20, Perla and five other trans friends were briefly detained by police:

They were joking, saying that we don’t have any rights. They put us in a cell with men. We were in a cell for 24 hours. I asked the police for water, and

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<sup>347</sup> Mirte Postema, “Amidst Violence, Hondurans March for Pride,” Human Rights Watch dispatch, September 9, 2019, <https://www.hrw.org/news/2019/09/09/amidst-violence-hondurans-march-pride>; Emy Padilla, “Honduras: Three Hate Crimes Against LGBT People in One Week” (“Honduras: tres crímenes de odio a personas LGBT en una semana”), *Presentes*, June 12, 2019, <https://agenciapresentes.org/2019/06/12/honduras-tres-crimenes-de-odio-contra-personas-lgbt-en-una-semana> (accessed September 11, 2020).

<sup>348</sup> Transgender Europe, “Trans Murder Monitoring,” [https://transrespect.org/en/map/trans-murder-monitoring/?submap=tmm\\_relative\\_numbers](https://transrespect.org/en/map/trans-murder-monitoring/?submap=tmm_relative_numbers) (accessed September 11, 2020).

<sup>349</sup> “Honduras: End Violence Against Transgender People,” Human Rights Watch news release, May 29, 2009, <https://www.hrw.org/news/2009/05/29/honduras-end-violence-against-transgender-people>.

<sup>350</sup> Human Rights Watch interview with Perla M. (pseudonym), Washington D.C., December 5, 2019.

<sup>351</sup> *Ibid.*

one of them threw water in my face. He said, ‘You all shouldn’t exist, we work guarding the community but not animals like you.’<sup>352</sup>

Perla said that police abuse, based on her own experience and the experience of others, was the main reason she joined a caravan of asylum seekers in January 2019. She said that a friend of hers was arrested and later found dead, and she had heard other stories of police allegedly killing trans women. Police violence against the general population was also a factor, she said, referencing an abusive police response to election-related protests in December 2017. “So many people were beaten, killed. After all this death I decided to go in the caravan, because I wanted to protect my life.”<sup>353</sup>

The state of Honduras is the respondent in a case currently pending before the Inter-American Court of Human Rights related to the murder of Vicky Hernández, a trans woman killed on the streets of Tegucigalpa in 2009. Petitioners, the Lesbian Network Cattrachas and RFK Human Rights, allege that the Honduran state bore direct responsibility for her death, and in addition, that in failing to conduct a meaningful investigation into the murder, including into whether violence was motivated by anti-LGBT prejudice, Honduras violated her right to life under the Inter-American Convention on Human Rights. The Inter-American Commission found Honduras responsible for, inter alia, the violation of the right to life, the right to equal protection and nondiscrimination, and the right to judicial protection under the American Convention on Human Rights.<sup>354</sup> The commission submitted the case to the court in April 2019 because of Honduras’s lack of compliance with the commission’s recommendations. Those recommendations included:

- Adopting legislative, administrative, or other measures to secure recognition for the self-perceived gender identity of trans persons, taking into account inter-American standards in such matters;
- Adopting legislative, administrative, or other measures to adequately map the context of violence faced by LGBT people in Honduras and introduce a comprehensive policy for its prevention and eradication that addresses its structural causes;

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<sup>352</sup> Human Rights Watch interview with Perla M. (pseudonym), Washington D.C., December 5, 2019.

<sup>353</sup> Ibid.

<sup>354</sup> Inter-American Commission on Human Rights, OEA/Ser.L/V/II.170 Doc. 179, Report No. 157/18, Case 13.051, Report on Merits, December 7, 2018, <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf> (accessed September 11, 2020), p. 24.



- Designing instruction, awareness, and training programs for state security bodies in relation to violence based on prejudice against LGBT persons.<sup>355</sup>

Human Rights Watch wrote to the Honduran Attorney General’s Office in July 2019 requesting available statistics on violence against LGBT people, including criminal cases opened and cases resulting in convictions. According to the office, the special prosecutor for crimes against life, which prosecutes murders, opened 45 cases for murders of LGBT people between 2015 and September 2019, of which 12 had resulted in convictions. None of these cases were prosecuted as hate crimes.<sup>356</sup>

### *Domestic Violence*

Human Rights Watch interviewed four LGBT Hondurans who described experiencing domestic violence or neglect at the hands of family members or intimate partners, or both. One went to the police to file a complaint, but only faced further abuse. The other three did not consider filing complaints, expecting police would not be responsive.

Carla T., a 24-year-old transgender woman from Comayagüela, said that from the age of 12, her family beat her because of her perceived gender difference. “They punished me daily,” she said, adding that her mother kept her three brothers away from her, as if they would “catch” what she had if they were near her.<sup>357</sup>

Anabel H., a trans woman from Tegucigalpa, said that after her father saw her wearing makeup and women’s clothing, he kicked her out of the home at age 17, with nothing but the clothes she was wearing. She walked for four hours to find friends who she thought might be able to help her. They introduced her to sex work, the only way they knew to survive. For children under age 18, sex work is considered under international law as one of the worst forms of child labor, and Anabel experienced it as rape.<sup>358</sup>

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<sup>355</sup> Inter-American Commission on Human Rights, OEA/Ser.L/V/II.170 Doc. 179, Report No. 157/18, Case 13.051, Report on Merits, <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf>, p. 24.

<sup>356</sup> *Ibid.*

<sup>357</sup> Human Rights Watch interview with Carla T. (pseudonym), Los Angeles, December 13, 2019.

<sup>358</sup> International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) (accessed September 11, 2020), art. 3(b); Human Rights Watch interview with Anabel H., Comayagüela, May 16, 2019.

Gabriela P., a 21-year-old trans woman who grew up in Cortés department, experienced severe domestic violence as a child, leading to a life on the move. Gabriela’s mother left home when she was one month old, and she was raised by her father. She told Human Rights Watch how the abuse began:

At age eight, I told my dad not to buy me boys’ toys, but to buy me dolls and dresses. I said, ‘I feel like a girl.’ He grabbed me by the hair and hit me with a broomstick. He locked me in a room. I spent days without eating. He said, ‘If you don’t want to be a boy, you’re going to die.’

When my father beat me, I tried to go to the police, and they called me a faggot and said they wouldn’t help me. I went to the police twice in Honduras. The second time I went dressed as a girl and they pulled my hair, pushed me with a gun and told me to leave.<sup>359</sup>

Gabriela P. fled her abusive family, and her country, for the first time at age eight-and-a-half, trying to make it to Mexico or the United States. She traveled through Guatemala to Belize, “by myself, asking for directions, asking for money,” before Belizean authorities turned her back at the border and she returned to Honduras. Back at home, she said, she would go for days without being given food. At one point her father submerged her in a *pila*, a clothes-washing trough, because of her gender expression, only stopping when a neighbor intervened.<sup>360</sup> She fled again at age 12, “begging food and money, barefoot,” and made it as far as Mexico. There, in Chiapas, Gabriela P. said, several men gang-raped her. She did not report the rape to the police, afraid they would deport her. She was caught by Mexican immigration authorities and deported anyway, shortly after the rape. Gabriela P. fled Honduras five times altogether before she eventually made it to the United States with a caravan in 2018. Her asylum case was ongoing when Human Rights Watch interviewed her.

Lucía P., a trans woman from Comayagüela, experienced violence in the form of repeated sexual assault by an uncle, from age 7 through age 11. As an adult, she also suffered violence. In 2017 an intimate partner sent people to attack her following an argument:

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<sup>359</sup> Human Rights Watch interview with Gabriela P., Washington, D.C., December 5, 2019.

<sup>360</sup> Human Rights Watch interviews with Gabriela P., Washington, D.C., December 5, 2019, and by telephone, May 26, 2020.

My partner in Honduras said that he sent for me to be attacked by others. I don't know if he was the one who sent them, but two people assaulted me. I fell unconscious, six to eight minutes. I had a black eye, a bleeding nose. I thought it was a robbery, but I was not robbed.<sup>361</sup>

In around 2014, her partner put a gun in her mouth. "Then I decided to leave," Lucía P. said. She told Human Rights Watch she never considered filing a police report: "We [trans women] don't get any support from the government."<sup>362</sup>

Scarlett, a 35-year-old bisexual woman, left Honduras after she was beaten by her male former partner, who discovered Scarlett was in a relationship with a woman.

He realized I was with a woman and started to say bad words, lesbian, dyke. He pushed me on the bed and hit me on the back. My son was 10 years old and realized what he was doing and prevented him from doing more.

I never went to the police because the police don't do anything about women who are with men [and are beaten], let alone those of us who are with women. My ex-partner's sister was beaten seriously and she filed a report and the police never did anything.<sup>363</sup>

### *Violence and Harassment by State Security Forces*

Of the 25 interviews with LGBT people in or from Honduras, eight recounted violations by state security agents. These security agents included the National Police as well as the Military Police, a special command of the Armed Forces that was created by former president Porfirio Lobo Sosa in 2013 to fight organized crime, but that works with the National Police to combat common crime.<sup>364</sup> Four reported being sexually or physically assaulted, while others said the National or Military police had humiliated, sexually

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<sup>361</sup> Human Rights Watch interview with Lucía P. (pseudonym), Los Angeles, December 10, 2019.

<sup>362</sup> Ibid.

<sup>363</sup> Human Rights Watch interview with Scarlett, Los Angeles, December 11, 2019.

<sup>364</sup> Republic of Honduras, Legislative Branch, Decree No. 168-2013, <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Ley%20de%20la%20Policia%20Militar%20del%20Orden%20Publico%20%283%2C9mb%29.pdf> (accessed September 11, 2020).

harassed, or discriminated against them. Only one person, William S., whose case is documented below, reported filing a complaint about violence by members of the security forces, and in his case it led to reprisals, ultimately leading him to seek asylum.

### **National Police**

Humberto M., a gay man from Tegucigalpa, was imprisoned at the National Penitentiary in Támara for two years, from 2013 to 2015, on murder charges, before he was ultimately acquitted. He said officers from the investigations wing of the National Police tortured him to get him to sign an incriminating document. Reports of torture and mistreatment in Honduran prisons were disturbingly common during this period, with the Center for Prevention, Treatment and Rehabilitation of Victims of Torture (CPTRT) reporting that 6 out of 10 people in detention were allegedly subjected to torture or cruel, inhuman, or degrading treatment during their arrest in certain cities between December 2013 and July 2014.<sup>365</sup> Some forms of torture that Humberto M. experienced may have been unrelated to his sexual orientation: he said police beat him, left him naked with his hands and feet tied, threw water and sprayed tear gas into his cell. But other forms of torture and mistreatment, including rape by an instrument, were clearly homophobic in nature.

The harassment was pretty constant. One put his penis in my face. One held me, raised my head and the other put his penis in my face. They told me: ‘But aren’t you a faggot? Isn’t that how you like it?’ When they inserted the police baton into my rectum, they said to me: ‘Isn’t it what you like?’ I was silent to bear the pain. Again they left me, with a blow to the face.<sup>366</sup>

Catrachas Lesbian Network closely followed his case, and after six months a lawyer with Catrachas managed to secure his transfer to another prison.<sup>367</sup>

Sexual assault by police may also be opportunistic. Perla M., a 29-year-old trans woman from San Pedro Sula, told Human Rights Watch that police harassed her on the street when

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<sup>365</sup> Centro de Prevención, Tratamiento y Rehabilitación de Víctimas de la Tortura y sus Familiares (Center for Prevention, Treatment and Rehabilitation of Torture Victims and their Families), Report for the Universal Periodic Review of Honduras (“Informe para el Examen Periódico Universal Honduras”), August 24, 2013, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1754&file=SpanishTranslation> (accessed September 11, 2020).

<sup>366</sup> Human Rights Watch interview with Humberto M. (pseudonym), Tegucigalpa, August 26, 2019.

<sup>367</sup> Ibid.

she was engaging in sex work. According to Perla, the police informed her and her fellow sex workers that if they wanted to work, they had to sell drugs that the police confiscated from others and to provide sexual services to police officers. Extorting sexual services is a form of sexual assault.<sup>368</sup>

Perla also said that when she was 20 years old, police arrested her and five other transgender friends on charges related to sex work and detained them overnight. They took the 100 lempiras (US\$4) that Perla had on her person and, when she said she was thirsty, an officer threw water on her face.<sup>369</sup>

Miguel R., a 26-year-old bisexual man from Tegucigalpa, described several incidents involving abusive police conduct. When Miguel was 17 years old, around 2010, three police officers stopped Miguel in the street, took Miguel to a place outside his neighborhood and ordered him to take all his clothes off. They asked if he was “a faggot,” and one officer ripped off his earring. When he started bleeding, the officers let him leave.<sup>370</sup> Miguel said he remembered being harassed by police as early as age 13, when police mocked him in the street for his manner of walking.<sup>371</sup>

In 2012, Miguel, then 19, attended a meeting of the Association of Youth in Motion (AJEM), an LGBT and indigenous rights organization. When he left the meeting with friends, three police officers approached and asked them for their identification. The officers began to mock them, calling them names like “fucking faggot.” When one of Miguel’s friends told the officers to leave them alone, the officers threw water and pointed their weapons at them. After one of the young men began to cry, the officers left, telling Miguel and his friends, “Stop making a scene.”<sup>372</sup>

Alberto G., a 34-year-old gay man from the Department of Colón, said that in 2018 he was biking back home after curfew when he was stopped by police in a patrol car, who asked for his identification. He said that the police likely assumed he was gay because he was wearing tight fitting clothes. They took him to a police post, where they asked if he was out

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<sup>368</sup> Human Rights Watch interview with Perla R. (pseudonym), Washington D.C., December 5, 2019.

<sup>369</sup> Human Rights Watch interviews with Perla M., Washington D.C., December 5, 2019, and by telephone, June 29, 2020.

<sup>370</sup> Human Rights Watch interview with Miguel R. (pseudonym), Los Angeles, December 12, 2019.

<sup>371</sup> Ibid.

<sup>372</sup> Human Rights Watch interview with Miguel R. (pseudonym), Los Angeles, December 12, 2019.

cruising for men, taunted him with terms like “little butterfly,” an offensive term used for gay people, and asked him to provide sexual favors. They detained him for the night, only allowing him to leave the next day after he cleaned the patrol car. Alberto G. told Human Rights Watch he didn’t consider filing a complaint: “The police don’t take gay people seriously,” he said.<sup>373</sup>

### **Military Police**

The establishment of Honduras’s Military Police for Public Order, part of a government initiative to fight organized crime in 2013, has led to an increased militarization on the streets of Honduras. The military police, like the National Police, set up checkpoints in the streets, stop civilians arbitrarily, and have been implicated in a number of human rights abuses, including during national elections in 2017.<sup>374</sup> The UN High Commissioner of Human Rights has recommended that the military police’s role in law enforcement be reined in.<sup>375</sup> The National Human Rights Commission opposed its creation, and an official with the commission described military police officers as acting in violation of the law.<sup>376</sup>

In May 2019, William Alejandro Martínez, a 36-year-old transgender man, was on his way home from work at an LGBT rights organization in Comayagüela when three military police officers stopped him and asked for his identification, then sexually assaulted and threatened to arrest him because his gender expression did not match the female sex marker on his ID card.

They looked at my ID and said, ‘She’s a woman,’ and threw [the ID] back at me. I said, ‘Biologically I’m a woman, I’m part of the community of sexual diversity.’ One of them grabbed my hand and said they were going to take

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<sup>373</sup> Human Rights Watch interview with Alberto G. (pseudonym), Los Angeles, December 13, 2019.

<sup>374</sup> United Nations High Commissioner for Human Rights, *Accountability for Human Rights Violations Committed in the Context of the 2017 Elections in Honduras: Progress and Challenges*, January 2020, [https://www.ohchr.org/Documents/Countries/HN/HondurasFollowupreportaccountabilityforHRviolations\\_FINALEN.pdf](https://www.ohchr.org/Documents/Countries/HN/HondurasFollowupreportaccountabilityforHRviolations_FINALEN.pdf) (accessed September 11, 2020).

<sup>375</sup> *Ibid.*, p. 22; United Nations High Commissioner for Human Rights, “Human Rights Violations in the Context of the 2017 Elections in Honduras,” undated, [https://www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations\\_Honduras\\_EN.pdf](https://www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations_Honduras_EN.pdf) (accessed September 11, 2020); United Nations High Commissioner for Human Rights, “Annual Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Honduras,” A/HRC/34/3/Add.2, February 9, 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1702929.pdf> (accessed September 11, 2020).

<sup>376</sup> Human Rights Watch interview with Francia Maradiaga, Tegucigalpa, May 16, 2019.

me with them. ‘What the fuck are you?’ He touched my breasts and stuck his hand inside my genitals. I said, ‘Don’t touch me, I’m a human rights defender.’ The other one pointed his rifle at me and said, ‘I don’t give a damn what you are.’

There, I froze. I was paralyzed. I thought they were going to kill me. My life passed before my eyes. A white pickup truck was passing by and I shouted ‘Help, they’re going to kill me!’ The driver stuck his head out the window, ‘What’s going on?’ The police officer who was holding me took my phone from my pocket and said, ‘We’re going to find you.’ The other one, with the rifle, said ‘Get out of here fucking dyke, when we find you, we’re going to put this in you,’ and pointed to his rifle.

I don’t remember how I got home, I was trembling so much.

Martínez filed a complaint at the Prosecutor’s Office, although he said staff there refused to qualify the crime as sexual assault because there was “no penetration” by a penis, annotating the complaint simply as robbery, discrimination, and abuse of authority.<sup>377</sup> A year after filing the complaint, Martínez had not heard back from the Prosecutor’s Office. Martínez also filed a complaint at the Protection Mechanism for Human Rights Defenders, a government agency, but he said officials there simply suggested he should change his schedule and hours to avoid problems.<sup>378</sup> Martínez explains how the incident impacted him:

It killed me, having a rifle in my face.... When I got home I cried like I have never cried before. The most painful thing is that if they had killed me, I would just be one more number, and one less homosexual. One less embarrassment for my family, ‘When the dog dies the rabies is gone.’

Psychologically, that has destroyed me. It was the straw that broke the camel’s back. It’s always been about living, enduring everything, having a

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<sup>377</sup> Article 173 of Guatemala’s penal code defines rape in a manner that is inclusive of digital penetration, and the 2008 law on femicide and other violence against women includes the crime of sexual violence, which is defined broadly and does not require penetration. It is not clear why prosecutors did not qualify the assault on Martínez as sexual violence.

<sup>378</sup> Human Rights Watch telephone interview with William Alejandro Martínez, June 11, 2020.

smile, but I can't take it anymore.... There's no one to protect my security, my rights. No one can guarantee me a safe space.<sup>379</sup>

In June 2019, Martínez said, the same three military police officers showed up near his workplace again, this time in civilian clothes. They threw him to the ground, kicked him, told him they knew that he had been to the prosecutor's office, and threatened to kill him. Fearing for his life, Martínez fled to a Spain 48 hours later with the help of LGBT organizations in Honduras with only his plane ticket and €60. At time of writing, he was awaiting the adjudication of his asylum claim there.<sup>380</sup>

Perla M., a 29-year-old trans woman from San Pedro Sula, told Human Rights Watch that in 2017, three military police officers came to her home and told her that someone had filed a complaint against her, and that she needed to come with them. "But they didn't take me to a court, or a jail," she said. "They told me I was about to live my worst nightmare, and they took me to an abandoned house and raped me."<sup>381</sup> Perla said she attempted to file a complaint with the National Civil Police, but that an officer called her a "faggot" and told her to come back another day.<sup>382</sup>

Lucía P., a 25-year-old trans woman, said that when she was 20 years old, a group of market vendors cursed at Lucía and her friends, threw fruit and water at them, and said "people like them" should not exist. Four military police officers were nearby and Lucía and her friends asked for help, but instead of helping of them, one of the officers said, "God made woman for man, man for woman."<sup>383</sup>

JLo Córdova., a 30-year-old trans human rights defender, experienced severe and repeated violence. Córdova said she had been shot three times by men whom she believed to be members of the military police in Comayagüela, where military police have an active presence. She believed she was targeted because as a well-known human rights activist,

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<sup>379</sup> Human Rights Watch interviews with William Alejandro Martínez, Tegucigalpa, May 16, 2019, and by telephone, June 11, 2020.

<sup>380</sup> Human Rights Watch telephone interview with William Alejandro Martínez, June 11, 2020.

<sup>381</sup> Human Rights Watch telephone interviews with Perla M., June 29, 2020, and August 14, 2020.

<sup>382</sup> Ibid.

<sup>383</sup> Human Rights Watch interview with Lucía P. (pseudonym), Los Angeles, December 10, 2019.



she often publicly denounced harassment and violence against other trans people.<sup>384</sup> Córdoba said she was first shot in 2012 in a park adjacent to the headquarters of the Joint Chiefs of Staff of the Armed Forces in Tegucigalpa. She saw two men in military uniforms and could hear them saying they intended to “clean the park so there are no more faggots.” Córdoba said that when they left, she dragged herself to the street, unable to walk. A police patrol took her to the Hospital Escuela and she underwent surgery.<sup>385</sup>

Córdoba was shot at again at again, this time without being hit, in October 2016.<sup>386</sup> After the October 2016 attack, she filed a complaint and authorities showed her a photo lineup, but Córdoba did not recognize anyone. In October 2017, as she was leaving work, a man got out of a car, shot her in the knee, and left without saying anything. After she recovered, she again filed a complaint.<sup>387</sup> None of the complaints have resulted in investigations or arrests, to Córdoba’s knowledge.<sup>388</sup>

### *Violence by Gangs*

Gang violence is pervasive in Honduras, and LGBT people report physical assault, extortion, and intimidation at the hands of gang members. LGBT people who felt compelled to leave their homes and communities frequently cited gang violence as a factor. Gang violence is both general and specific. LGBT people are caught up in the general morass of gang related violence, but in some instances are specifically targeted for being LGBT, or the form of harassment they experience is related to their sexual orientation or gender identity. Miguel R., for instance, said he was threatened by gangs after witnessing a murder, and there was no indication they were aware that he was gay.<sup>389</sup> In other cases, gang members appeared to target LGBT people motivated by anti-LGBT animus, to exert power, or due to their perceived vulnerability to extortion.

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<sup>384</sup> Human Rights Watch telephone interview with JLo Córdoba, September 1, 2020.

<sup>385</sup> Human Rights Watch interview with JLo Córdoba, Comayagüela, August 21, 2019.

<sup>386</sup> Front Line Defenders, “Assassination Attempt Against Jlo Córdoba,” November 4, 2016, <https://www.frontlinedefenders.org/en/case/assassination-attempt-against-jlo-cordoba> (accessed September 11, 2020).

<sup>387</sup> Human Rights Watch interview with JLo Córdoba, Comayagüela, August 21, 2019.

<sup>388</sup> Human Rights Watch telephone interview with JLo Córdoba, September 1, 2020.

<sup>389</sup> Human Rights Watch interview with Miguel R. (pseudonym), Los Angeles, December 12, 2019.

Victims rarely file complaints when they are victimized by gangs, with reason: as an official from the National Human Rights Commission explained, “If people complain, it gets worse. Some do file complaints, but then they don’t want you to investigate.”<sup>390</sup>

Marina T., a trans woman from San Pedro Sula, said that in 2017, nine men from MS-13 gang-raped her, breaking her clavicle. Her brother, whom she described as transphobic, was also an MS-13 member and Marina T. told Human Rights Watch that she believed he may have been complicit in her rape.<sup>391</sup>

I was raped by nine gang members from MS-13 in 2017. I was coming from work, I was a hairstylist in houses, I had many clients, that night they intercepted me with pistols, they tore off my clothes, and did whatever they could with my body. They left me full of bruises on my arms. I didn’t file a complaint because they said if I talked, they were going to kill my mother and my sister.

I just asked for strength from God and I went to a health center, did an HIV test. Thank God, I was negative.<sup>392</sup>

Marina T. fled Honduras after the attack. She told Human Rights Watch, “I had nowhere to flee in my country.”<sup>393</sup>

Noé E., a trans man from Comayagua, described the attack to which three gay friends were subjected by gang members, and the subsequent police inaction.

One day I was walking with my friends. There were gang members where I lived, and they couldn’t stand to see a *travesti* or a person who was visibly gay, and they attacked and beat up my friends. The police arrived, and they didn’t do anything. The police said: ‘That’s what happens when you go

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<sup>390</sup> Human Rights Watch interview with Francia Maradiaga, Tegucigalpa, May 16, 2019.

<sup>391</sup> Human Rights Watch interview with Marina T. (pseudonym), Tijuana, January 31, 2020.

<sup>392</sup> Ibid.

<sup>393</sup> Ibid.

around tempting men.’ My friends made a complaint, but the police who were present said nothing was going to happen with that complaint.<sup>394</sup>

Alberto G., a 34-year-old gay man from Colón department, began to have problems with gang members in November 2011.

I was sitting in a park in Tocoa, Colón. Four or five guys approached, around 23 to 25 years old. I knew they were gang members because of their tattoos and because they made gang signs with their fingers. They said, ‘What are you doing here, you faggot piece of shit. Get out of here!’ I said, ‘But it’s a public park.’ They said, ‘Move on before we kill you, or rape you.’

A few days later, Alberto began to get scared that he was at risk for talking back to the gang members. He briefly fled to Mexico but was deported the same month.

In February 2012, Alberto ran into the same gang members on a dark street.

I was walking home, on a dark street. There, they surrounded me, the same ones who had threatened me. They said, ‘Today you’re going to die, faggot.’ I told them to leave me alone. One of them pulled me, and then I was shot in the back. I screamed like crazy.

I don’t know who took me to the hospital, but I found myself there, bleeding. The police arrived and asked what had happened to me. I didn’t tell them about my sexual orientation, out of fear, and because my family and friends were there.... And I didn’t file a complaint against the people who shot me, because they had threatened to harm my family if I snitched.<sup>395</sup>

Alberto G.’s large intestine had been perforated by the bullet, and he spent nearly three weeks in the hospital. Alberto never reported the incident to the police because the gang

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<sup>394</sup> Human Rights Watch interview with Noé E., Los Angeles, December 11, 2019.

<sup>395</sup> Human Rights Watch interview with Alberto G. (pseudonym), Los Angeles, December 13, 2019.

members had warned him not to. When he was discharged, he said, people on the street gossiped that he was shot for being gay.<sup>396</sup>

In February 2018, Alberto G. was walking in Tocoa when he ran into three or four young men he believed to be gang members and who were “drinking, smoking, and acting crazy.” He recounted:

They stepped into my path. One of them wanted sex. They grabbed me by force. One of them hit me with something in the neck. I said that they disgusted me, and they got angry.... I fainted, [after feeling] that they had cut my face, with something like a knife... When I came to, they had gone. They didn’t rape me. I had blood pouring from my face. A motorcycle driver passed by and drove me to the hospital, where I got stitches.<sup>397</sup>

Fearing further attacks, he went to live with his sister in another town, where he was severely depressed, including about the permanent scar on his face. He said he did not report the incident out of fear of retribution. In September 2018, he went back to Tocoa and ran into the same men again, who asked him if he liked the “souvenir” on his face. Alberto G. ran away. These incidents of violence ultimately drove him to seek asylum in the United States.<sup>398</sup>

Lucía P., a 25-year-old transgender woman from Comayagüela, told Human Rights Watch that she left Honduras for the United States because of threats from MS-13:

They started around January 2018. At the mall I was threatened.... They told me, ‘We don’t want people like you. You know what will happen to you, that’s why you’re found in buckets, in plastic bags, with things in your parts.’ The second time I was at work and went out. I was pushed against a truck. They told me, ‘You know it will happen the third time. I’m going to hit you with lead.’<sup>399</sup>

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<sup>396</sup> Ibid.

<sup>397</sup> Ibid.

<sup>398</sup> Human Rights Watch interview with Alberto G., Los Angeles, December 13, 2019. Alberto showed a Human Rights Watch researcher the scar on his face.

<sup>399</sup> Human Rights Watch interview with Lucía P. (pseudonym), Los Angeles, December 10, 2019.

Carla T., a 24-year-old transgender woman from Comayagüela, said eight gang members visited the home where she lived with her grandmother in December 2017 and told her, “We don’t want people like you here. You have to leave. You will infect children.” In January 2018, the same gang members came to her house to attempt to extort her for 100 lempiras (US\$4). Carla tried to file a complaint at the police station in San Isidro, but she said police officers did not take her seriously and called her “faggot.” While she was at the police station, the gang members showed up and claimed that Carla had been harassing them. “So then the police locked me up for the night, for giving the gang members problems,” she told Human Rights Watch.<sup>400</sup>

The Honduran victims of gang violence Human Rights Watch interviewed were all gay or transgender, but lesbians are also reportedly victimized. Francia Maradiaga of the National Human Rights Commission reported one case in which gang members suspected a local restaurant owner was a lesbian. They painted “Get out of here, lesbian” on her restaurant, forcing her to close her business and leave the area.<sup>401</sup>

### *Violence by Members of the Public*

Interviews conducted by Human Rights Watch revealed that everyday violence, not necessarily linked to gangs, plagues many LGBT people in Honduras. As with other forms of violence against LGBT people, several factors prevent access to justice: fear of repercussions or skepticism about the likelihood of a positive outcome that discourages victims from filing complaints; actual and perceived anti-LGBT attitudes on the part of police; and a broken, corrupt judicial system.

Juan Y., a 35-year-old trans man who grew up in the Francisco Morazán department, told Human Rights Watch that in 2013, the man he considered his best friend, together with other men, caught him when he was walking alone in the street and gang-raped him.

I went to the police, and they asked me: ‘What were you doing? Why did you expose yourself by going out alone?’ A female police officer told me, ‘A woman can’t go out alone.’ I don’t think they took down the complaint. They didn’t give me any copy. They didn’t send me to the Forensic Medicine

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<sup>400</sup> Human Rights Watch interview with Carla T., Los Angeles, December 13, 2019.

<sup>401</sup> Human Rights Watch interview with Francia Maradiaga, Tegucigalpa, May 16, 2019.

office, like they usually do in cases of rape. One police officer said, ‘But raping you is like raping a man.’ They took it as a joke.<sup>402</sup>

Anabel H., a 29-year-old trans woman from Tegucigalpa, said three men ambushed her when she arrived in her apartment in June 2011. They robbed and punched her, hit her with a pole, doused her with alcohol, and lit her on fire. Anabel managed to escape as they debated how to kill her. She spent nine months in hospital after the attack.<sup>403</sup>

## **Discrimination in Honduras: A Pathway to Life on the Margins**

Several interviewees described being targeted and stigmatized from a young age because of their non-normative gender expression. Their perceived difference rendered them vulnerable to bullying and abuse. The cumulative effect of being rejected at home, bullied at school and ostracized from the community is to reinforce a cycle of marginalization and poverty. Such was the case for Gabriela P., who endured severe abuse by her father, before fleeing to Belize, Guatemala, Mexico, and finally the United States, as described above. As a direct consequence of the violent abuse, Gabriela never went back to school after fleeing home for the first time, in second grade.<sup>404</sup>

Seven interviewees told Human Rights Watch that they had experienced bullying and discrimination in educational settings. They described being targeted by peers, teachers, and administrators. Some said that they felt compelled to leave school as a result, reducing their life chances and placing them on a path to heightened economic insecurity.

### *Education Discrimination and Bullying*

Interviewees described school as an unsafe space, especially for those who are visibly gender non-conforming. For two trans people interviewed by Human Rights Watch, pervasive bullying led them to drop out of school.

Carla T., a 24-year-old transgender woman from Comayagüela, dropped out at age 13 because of bullying and direct discrimination from teachers who forced her to sit

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<sup>402</sup> Human Rights Watch interview with Juan Y. (pseudonym), Tegucigalpa, May 17, 2019.

<sup>403</sup> Human Rights Watch interview with Anabel H. (pseudonym), Tegucigalpa, May 16, 2019.

<sup>404</sup> Human Rights Watch interview with Gabriela P., Washington, D.C., December 5, 2019.

separately from other students.<sup>405</sup> Anabel H., a trans woman from Tegucigalpa, said that from the age of 10, she stopped attending school halfway through every year because of bullying. In high school, she said, her classmates threatened to rape her and threw water bottles at her. When she complained to the school director, she was told she should act like a boy if she did not want to be bothered. Anabel dropped out of school.<sup>406</sup>

Noé E., a non-binary person from Comayagua, dropped out at age 12. Their teachers knew they were being bullied and did not address it, they said. “They didn’t do anything. They knew how I was and to them it was always my fault.”<sup>407</sup> Noé E. was also suspended from school multiple times for refusing to wear the girls’ uniform.

Sometimes the teacher expelled me for two weeks, for not wearing the uniform. Because I was required to put on a skirt and blouse. Sometimes I put on a male uniform, but then I always had problems with my family, and with the school, because the teachers told me, ‘Why are you wearing that? Why are you putting on boys’ clothes when you’re a girl?’ I always said, ‘Because I like it, what is the problem?’ and they would send me home.<sup>408</sup>

Noé E. was not alone in suffering suspension or expulsion because of their gender expression. Juan Y., a 35-year-old trans man who grew up in Francisco Morazán department, told Human Rights Watch that he was expelled from his middle school: “They said it was because I was a lesbian. They said I couldn’t stay there because I was ruining the school’s environment.” In high school, Juan said, the principal sent him to a psychologist after finding out he had a girlfriend, and a pastor was brought in to lecture students about homosexuality:

He said God created man and woman... that homosexuality was condemned by God, and that those acts are not tolerable. That the classroom could not be contaminated with such persons.<sup>409</sup>

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<sup>405</sup> Human Rights Watch interview with Carla T. (pseudonym), Los Angeles, December 13, 2019.

<sup>406</sup> Human Rights Watch interview with Anabel H., Tegucigalpa, May 16, 2019.

<sup>407</sup> Human Rights Watch interview with Noé E., Los Angeles, December 11, 2019.

<sup>408</sup> Ibid.

<sup>409</sup> Human Rights Watch interview with Juan Y. (pseudonym), Tegucigalpa, May 17, 2019.

Lucía P., a 25-year-old transgender woman originally from Comayagüela, faced discrimination and sexual assault as a student:

When I was in school, I was abused by both students and teachers. Teachers incited students against me. In *colegio*, the bullying and mistreatment started again, also harassment, sometimes they beat me, sometimes they put their parts, one put his part in my mouth, one of them tried to force me to do oral sex.<sup>410</sup>

Miguel R., a 26-year-old bisexual man from Tegucigalpa, said that throughout his education, classmates bullied him, on one occasion hitting him with a rock, because he was effeminate. He informed teachers of the bullying, but they disciplined him instead.<sup>411</sup>

Kendra Jordany, a 31-year-old transgender woman and activist from San Pedro Sula, said that her high school sent her to a psychologist who tried to “change” her. Later, between 2011-12, during her studies at the National Autonomous University of Honduras in the Sula Valley, she complained against a professor who discriminated against her.

The professor stopped me at the end of the first class and said, ‘You can’t come dressed like this [...] you are a man and you are dressed as a woman.’ And I said that it was my right and that he had to respect my gender identity. He said to me, ‘But if I enter that door with a skirt, are you going to respect me?’ So I said I did not care how he was dressed, but I told him that I was going to report him and that I was going to leave the class, and that I was disgusted that a person like him would be teaching me. I went out, I started to cry. I was smoking and he came up to me with a cigarette and started talking about God. I complained about him to the university commissioner, and they gave him a verbal sanction.<sup>412</sup>

Kendra Jordany was the only LGBT person interviewed by Human Rights Watch who obtained any form of recourse for discrimination in an educational setting.

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<sup>410</sup> Human Rights Watch interview with Lucía P. (pseudonym), Los Angeles, December 10, 2019.

<sup>411</sup> Human Rights Watch interview with Miguel R. (pseudonym), Los Angeles, December 12, 2019.

<sup>412</sup> Human Rights Watch interview with Kendra Jordany, San Pedro Sula, August 28, 2019.



## *Employment Discrimination*

LGBT people in Honduras experience discrimination both during job searches and in the workplace. Of the twenty-five LGBT Hondurans interviewed by Human Rights Watch, eight, including seven trans people and one gay man, described experiences of employment discrimination.

Noé E., the non-binary person from Comayagua who dropped out of school at age 12 because of bullying and discrimination, as described above, also faced rejection at home and moved out at age 15. They found work selling clothes and shoes, but faced employment discrimination: “In some cases [employers] said ‘I can’t give you work because people are going to look at you strangely and they’re not going to want this here.’”<sup>413</sup>

Juan Y., a 35-year-old trans man, told Human Rights Watch that he faced discrimination on the job market, compounded by the fact that his identification documents did not match his gender identity:

There are many factories. They ask for a queue for women and one for men. When they look at the CV they say, ‘This is not the queue for women. You have to come another day.’ When I went on a day for women, I was rejected. They asked, ‘Where will we put you?’ When I said, ‘Anywhere, it doesn’t matter,’ they responded ‘What bathroom will you use?’

[...] I could work at the market because there they don’t ask for papers. However, if people there find out [about one’s gender identity], you can suffer violence [...] In order to set up a business, you need a license from the municipality and to get that you need to have an ID. The ID that I have is not acceptable to them.<sup>414</sup>

JLo Córdova, a 30-year-old trans activist, told Human Rights Watch that sex work can be the only viable employment for transgender women:

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<sup>413</sup> Human Rights Watch interview with Noé E., Los Angeles, December 11, 2019.

<sup>414</sup> Human Rights Watch interview with Juan Y. (pseudonym), Tegucigalpa, May 17, 2019.

Nobody accepts us. We are mocked when we submit our papers. We're not even considered for domestic work. So trans women resort to selling our bodies in order to survive. We have no other choice.<sup>415</sup>

Anabel H., a 29-year-old trans woman from Tegucigalpa, also sells sex due to employment discrimination:

I went to a clothing store first. I arrived and they told me that the position was filled. It was because of my gender expression because I looked very effeminate, that is what I felt. [...] Then to a restaurant to wash dishes and clean. They told me no. There was nothing to do. My friends told me that they could no longer help me. 'We prostitute ourselves from Monday to Friday to pay apartment, food, clothes, shoes.' So I said, 'Okay, I don't know what to do.'<sup>416</sup>

Carla T., a 24-year-old trans woman from Comayagüela, said she applied for a job at a clothing store but was turned away on grounds that she would "ruin the clientele." She also tried to get a job washing dishes and cleaning homes, but was unsuccessful.<sup>417</sup>

William Alejandro Martínez, a 36-year-old transgender man from Comayagüela, told Human Rights Watch that when he tried to get a job at a beauty salon, they did not want him because he looked like a man. When he tried to get a job in a carpentry shop, he was told they only wanted men.<sup>418</sup>

As discussed above, Honduras's penal code criminalizes discrimination, including employment discrimination. Yet none of the Hondurans interviewed by Human Rights Watch had attempted to file a complaint. Cattrachas said it had not received any employment discrimination complaints.<sup>419</sup> A representative of the Ministry of Human Rights in Honduras told Human Rights Watch, "People don't file complaints. Sometimes they

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<sup>415</sup> Human Rights Watch interview with JLo Córdova, Comayagüela, August 21, 2019.

<sup>416</sup> Human Rights Watch interview with Anabel H. (pseudonym), Tegucigalpa, May 16, 2019.

<sup>417</sup> Human Rights Watch interview with Carla T. (pseudonym), Los Angeles, December 13, 2019.

<sup>418</sup> Human Rights Watch interview with William Alejandro Martínez, Tegucigalpa, May 16, 2019.

<sup>419</sup> Voice messaging communication to Human Rights Watch from Astrid Ramos, Cattrachas, June 29, 2020.

don't even know that it's discrimination."<sup>420</sup> Authorities should ensure that victims will not be subjected to further discrimination if they decide to report a case of employment discrimination.

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<sup>420</sup> Human Rights Watch interview with Jacqueline Anchecta, vice minister of human rights, Tegucigalpa, May 13, 2019.

## V. Obstacles to Asylum in the United States, and Their Impacts

### Punished for Seeking Safety

Between January 2007 and November 2017, at least 2,253 LGBT people from the Northern Triangle entered the United States to seek protection from persecution. Cases from El Salvador, Guatemala and Honduras made up more than half of the total 4,385 asylum claims based on anti-LGBT persecution, according to data from the US Citizenship and Immigration Services.<sup>421</sup>

By the time LGBT asylum seekers from the Northern Triangle arrive at the southern US border, they have not only fled violence and discrimination at home, but are also often beaten down by violence and discrimination in transit through Mexico. A trans woman described her exhausting journey by bus through Mexico, during which migration authorities stopped the bus 23 times and checked her documents, hassling her “whenever they saw the difference between the photo on my ID card, where I look like a man, and the photo on my humanitarian visa.”<sup>422</sup>

The United States does not welcome these embattled LGBT survivors with open arms. When the April 2018 caravan of Central American migrants and asylum seekers arrived in Tijuana, US government officials repeatedly said that they would not be allowed in. Rejecting asylum seekers at borders flies in the face of international refugee law, but US policy under the administration of President Donald J. Trump has—through a variety of mechanisms—aggressively restricted asylum seekers’ access to the United States.<sup>423</sup>

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<sup>421</sup> Tim Fitzsimons, “Trump Proposals Threaten LGBTQ Asylum-seekers’ Hopes of Refuge in U.S.,” *NBC News*, August 20, 2020, <https://www.nbcnews.com/feature/nbc-out/trump-proposals-threaten-lgbtq-asylum-seekers-hopes-refuge-u-s-n1236736> (accessed September 10, 2020). The full USCIS data set, shared by NBC News, is on file with Human Rights Watch.

<sup>422</sup> Human Rights Watch interview with Marina T., Tijuana, January 31, 2020.

<sup>423</sup> A letter issued by President Trump to Congressional leaders in October 2017 set out the administration’s intention to reform the US immigration system. It expressed intent to “[s]ignificantly tighten standards and eliminate loopholes in our asylum system,” “[e]levate the threshold standard of proof in credible fear interviews,” and “[e]xpand the ability to return asylum seekers to safe third countries,” among other proposed policy changes. “President Donald J. Trump’s Letter to House and Senate Leaders & Immigration Principles and Policies,” White House, October 8, 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies> (accessed September 11, 2020).

People who flee the Northern Triangle to seek safety in the United States, at the end of an often arduous trek through Mexico, are confronted by a dizzying array of legal, law enforcement, bureaucratic, and procedural obstacles that make it increasingly difficult for asylum seekers of all backgrounds, including LGBT people, to enter the United States, lodge an asylum claim, and receive refugee status. These obstacles, erected between 2016 and 2020, and their impact on LGBT asylum seekers are discussed below. At time of writing, however, access to asylum at the southern border has been cut off almost entirely by a Centers of Disease Control and Prevention (CDC) order that effectively closes the border in response to the Covid-19 pandemic, which the administration seized upon as an opportunity to tighten the screws on migration.

The CDC order, issued on March 20, 2020, suspends entry at US land borders to most people, with no exceptions for asylum seekers.<sup>424</sup> A simultaneous interim final rule issued by the CDC authorizes US Customs and Border Protection (CBP) to summarily expel unauthorized migrants, including asylum seekers and unaccompanied children, without considering whether they are eligible for protection under US law.<sup>425</sup> The order is grounded in the CDC's quarantine powers under Title 42 of the Code of Federal Regulations, rather than Title 8, which covers immigration. It utilizes a medical quarantine rationale to countermand protections in US immigration law for refugees and short circuits the right of asylum seekers for an opportunity to lodge claims or have them examined.<sup>426</sup> In the first five months after the CDC order was issued, CBP summarily expelled more than 105,000 people from the US based on the order.<sup>427</sup> Human Rights Watch has submitted a comment calling for the order to be withdrawn on the grounds that it puts asylum seekers' lives at

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<sup>424</sup> Department of Health and Human Services, Centers for Disease Control and Prevention, Federal Register, <https://www.govinfo.gov/content/pkg/FR-2020-03-26/pdf/2020-06327.pdf>; US Department of Health and Human Services, Centers for Disease Control and Prevention, Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf).

<sup>425</sup> Department of Health and Human Services, Centers for Disease Control and Prevention, Federal Register, Vol. 85, No. 57, March 24, 2020, Notices, <https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-06253.pdf> (accessed September 11, 2020).

<sup>426</sup> Guttentag, "Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors," Just Security, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors>.

<sup>427</sup> US Customs and Border Protection, "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions," <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

serious risk and could result in violations of US legal obligations not to return refugees to danger.<sup>428</sup>

Before the CDC order, the Trump administration had already attempted to shut down most asylum claims from Central Americans through its Third-Country Asylum Rule, also known as the asylum transit ban, which would prohibit anyone who had transited through a third country from claiming asylum in the United States, on the grounds that those fleeing persecution should claim asylum in the first country they pass through.<sup>429</sup> Almost all LGBT people from the Northern Triangle who seek asylum in the United States travel by land through Mexico. A federal court struck down the rule on June 30, 2020 on procedural grounds.<sup>430</sup>

Other regulations that impose obstacles to asylum remain in place, although the Covid-19 pandemic has altered their implementation, and some restrictions have been superseded by the CDC order that prevents most asylum seekers from even attempting to initiate the asylum process. They include the following.

### *The Guatemala Asylum Cooperative Agreement*

An Asylum Cooperative Agreement (ACA), signed between the US and Guatemalan governments in July 2019, enables the United States to rapidly expel non-Guatemalan asylum seekers to Guatemala without allowing them to lodge asylum claims in the United States, but also leaves them without access to effective protection in Guatemala. As a result, they are effectively compelled to abandon their asylum claims, and some who have a well-founded fear of persecution appear to be returning to their home countries where they are at real risk of serious harm.

The United States sought to negotiate such an agreement with Mexico in mid-2018, with the aim of pushing all Central American asylum seekers back to Mexico, but Mexico's

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<sup>428</sup> Human Rights Watch, "Human Rights Watch Comment on CDC Interim Final Rule Suspending Entry of Persons into the US," <https://www.hrw.org/news/2020/04/23/human-rights-watch-comment-cdc-interim-final-rule-suspending-entry-persons-us>.

<sup>429</sup> "US: New Rule Flouts Asylum Norms," Human Rights Watch News Release, July 15, 2019, <https://www.hrw.org/news/2019/07/15/us-new-rule-flouts-asylum-norms>.

<sup>430</sup> Mejdric, "Federal Court Strikes Down Trump's Asylum Ban," *Politico*, <https://www.politico.com/news/2020/07/01/federal-court-strikes-down-trumps-asylum-ban-346939>.

government opposed the agreement.<sup>431</sup> In 2019, the United States negotiated Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador, under which the United States would transfer nationals of any of the three Northern Triangle countries to one of the other two countries to have their asylum claims examined. Guatemala initially refused to sign such an agreement with the United States, but succumbed after the United States threatened trade tariffs.<sup>432</sup> So far, only the agreement with Guatemala has been implemented; under it, the United States transferred 939 Honduran and Salvadoran asylum seekers to Guatemala under the US-Guatemala ACA between November 21, 2019 and March 16, 2020, at which point transfers were suspended because of the Covid-19 pandemic.<sup>433</sup>

Deportations under the Guatemala Asylum Cooperative Agreement violate US law, according to which the US government can only exclude a person from the asylum procedure and return them to a country that they have previously passed through if the US has in place what is known as a “safe third country agreement” with that country. US law stipulates the criteria for what constitutes a safe third country, including that the country must be able to provide the person “access to a full and fair procedure” for determining asylum or equivalent temporary protection.<sup>434</sup> The United Nations Refugee Agency (UNHCR) maintains that under such agreements, asylum seekers transferred to a third country must be “individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer,” with special consideration to vulnerable groups, and must be “protected against *refoulement*,” or involuntary return to their country of origin.<sup>435</sup>

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<sup>431</sup> Gabriel Stargardter, “Exclusive: Mexico Opposes US Plan to Make it Take Asylum Seekers – Document, Source,” *Reuters*, July 12, 2018, <https://www.reuters.com/article/us-mexico-usa-immigration-exclusive/exclusive-mexico-opposes-u-s-plan-to-make-it-take-asylum-seekers-document-source-idUSKBN1K23BA> (accessed September 11, 2020); Secretary of Foreign Relations, Government of Mexico, “Positioning of Mexico Before the Decision of the US Government to Implement Section 235(b)(2)(c) of its Immigration and Nationality Law,” <https://www.gob.mx/sre/es/articulos/posicionamiento-de-mexico-ante-la-decision-delgobierno-de-eua-de-implementar-la-seccion-235-b-2-c-de-su-ley-de-inmigracion-y-nacionalidad-185774?idiom=es> (accessed September 11, 2020).

<sup>432</sup> John Wagner, Mary Beth Sheridan, David J. Lynch, and Maria Sacchetti, “Trump Threatens Guatemala After it Backs Away From ‘Safe Third Country’ Asylum Deal,” *Washington Post*, July 23, 2019, [https://www.washingtonpost.com/politics/trump-threatens-guatemala-over-delay-in-safe-third-country-asylum-deal/2019/07/23/cc22417e-ad45-11e9-bc5c-e73b603e7f38\\_story.html](https://www.washingtonpost.com/politics/trump-threatens-guatemala-over-delay-in-safe-third-country-asylum-deal/2019/07/23/cc22417e-ad45-11e9-bc5c-e73b603e7f38_story.html) (accessed September 11, 2020).

<sup>433</sup> Camilo Montoya-Galvez, “Guatemala Suspends Deportation Flights, Pausing Trump Asylum Deal Over Coronavirus,” *CBS News*, March 17, 2020, <https://www.cbsnews.com/news/guatemala-coronavirus-suspends-deportation-flights-trump-asylum-deal> (accessed September 11, 2020).

<sup>434</sup> United States Code, Immigration and Nationality Act, <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>, section 208 (a)(2)(A).

<sup>435</sup> UNHCR, Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum Seekers, May 2013, <https://www.refworld.org/docid/51af82794.html> (accessed September 11, 2020).

Guatemala—according to the US State Department’s own assessment, “among the most dangerous countries in the world,”—only has a rudimentary and cumbersome asylum procedure, and, as demonstrated by the ACA’s first few months, is unprepared to take on thousands of asylum seekers.<sup>436</sup> Only 20 of the 939 transferees—about 2 percent—applied for asylum in Guatemala.<sup>437</sup> None of them, as of September 2020, had been granted asylum.<sup>438</sup> As Human Rights Watch and Refugees International argued in a May 2020 report, Guatemala does not provide access to a full and fair asylum procedure and does not provide effective protection for asylum seekers. The United States, therefore, violates its domestic and international nonrefoulement obligations by not examining the asylum claims of Honduran and Salvadoran asylum seekers before transferring them to Guatemala.<sup>439</sup>

When Human Rights Watch and Refugees International conducted interviews in Guatemala in February 2020 with 30 people subject to the ACA, only one said they were applying for asylum in Guatemala. Several said they had no family or support networks in Guatemala and that they feared for their safety in Guatemala. Many indicated they would return to El Salvador and Honduras despite continuing to express a fear of persecution there.

ICE transferred asylum seekers to Guatemala with little or no regard to whether they might face a risk of persecution there, including based on sexual orientation or gender identity. For a Salvadoran or Honduran LGBT person who has fled violence and the indifference or hostility of homophobic or transphobic authorities in search of safety, being forcibly transferred to Guatemala, where there is a possibility they will face similar forms of persecution and similar indifference or hostility from Guatemalan authorities, is a devastating blow.

Human Rights Watch spoke with a lawyer, Linda Corchado, representing a gay Honduran client who was transferred to Guatemala on January 23, despite telling US immigration

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<sup>436</sup> US Department of State, Overseas Security Advisory Council, “Guatemala 2020 Crime & Safety Report,” March 31, 2020, <https://www.osac.gov/Country/Guatemala/Content/Detail/Report/d8c492ad-b604-457b-bd8f-18550eec1ff2> (accessed September 11, 2020); Refugees International and Human Rights Watch, *Deportation With a Layover*.

<sup>437</sup> Montoya-Galvez, “Guatemala Suspends Deportation Flights, Pausing Trump Asylum Deal Over Coronavirus,” *CBS News*, <https://www.cbsnews.com/news/guatemala-coronavirus-suspends-deportation-flights-trump-asylum-deal>.

<sup>438</sup> Human Rights Watch email correspondence with a representative of the UN High Commissioner for Refugees, September 8, 2020.

<sup>439</sup> Refugees International and Human Rights Watch, *Deportation With a Layover*.



authorities he feared for his safety in Guatemala. Josué fled Honduras after being assaulted and receiving death threats for being gay. According to Corchado, after being sent to Guatemala under the ACA, Josué was threatened by men who made homophobic comments. He sustained multiple injuries to his face and body when he fell after the group pursued him on a motorbike. Josué told his attorney he did not feel safe remaining in Guatemala.<sup>440</sup> At the time of writing, he had returned to Mexico, but was also experiencing insecurity there because of the presence of armed men who target asylum seekers.<sup>441</sup>

According to Lambda Association, a leading LGBT rights organization in Guatemala City, the Guatemalan government has not coordinated with LGBT groups to ensure that LGBT transferees are provided information about their rights and resources available to them. Carlos Valdés of Lambda said it was likely that most LGBT transferees either returned to Mexico to try their luck there, attempted to return to the United States, or returned to their country of origin and the risk of persecution.<sup>442</sup>

Human Rights Watch asked Honduran and Salvadoran LGBT asylum seekers in Tijuana who were waiting in Mexico for their credible fear interview under the metering program (described below) how they would feel about being transferred to Guatemala. Marina T., a 28-year-old transgender asylum seeker from Honduras who fled her country after being gang raped by members of MS-13, said:

I would not accept to go to Guatemala. It's close to my country and the network between the gangs is broad. They could come find me in Guatemala and kill me.<sup>443</sup>

Marina T. said her own brother is a MS-13 member and has been violent towards her, making her particularly fearful that gang members could easily find her.<sup>444</sup>

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<sup>440</sup> Human Rights Watch text message correspondence with immigration attorney Linda Corchado, February 5, 2020; Hamed Aleaziz, "Two Gay Immigrants Left Everything For Safety In The US. Instead, They Were Sent To Guatemala," *BuzzFeed News*, February 10, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/gay-immigrants-asylum-guatemala-us-trump> (accessed September 11, 2020).

<sup>441</sup> Human Rights Watch email correspondence with Linda Corchado, August 12, 2020.

<sup>442</sup> Human Rights Watch interview with Lambda director Carlos Valdés, Guatemala City, February 13, 2020.

<sup>443</sup> Human Rights Watch interview with Marina T. (pseudonym), Tijuana, January 31, 2020.

<sup>444</sup> Human Rights Watch interview with Marina T. (pseudonym), Tijuana, January 31, 2020.

Felicia J., a trans woman from Tegucigalpa, Honduras, whom Human Rights Watch interviewed in Tijuana, said she fled Honduras after gang members threatened her because of her gender identity. She traveled through El Salvador, Guatemala, and Mexico, spending two weeks in Guatemala. When a Human Rights Watch researcher asked whether she would consider claiming asylum in Guatemala under the ACA, she said:

I can't be in Guatemala, I was already there, it would not be logical, there's a lot of violence and [trans] people can't assimilate. If I were sent back to Guatemala I might as well go back to Honduras, because at least I have family there. In Guatemala, there are no opportunities, it's almost the same as Honduras. The mentality is the same, the violations of human rights, the impunity, if I'm in the street someone can just drive up and shoot me, and if you say that you saw it, you'll be next. This is exactly what we're trying to escape from.<sup>445</sup>

Michelle S., a 25-year-old trans woman from El Salvador, said she had tried seeking safety in Guatemala. Michelle, who fled brutal abuse at the hands of her family at age 15 and began doing sex work, went to Guatemala at age 18 to escape the threat of violence from gang members in El Salvador: "I went to Guatemala so they wouldn't kill me."<sup>446</sup> But she nearly faced death in Guatemala, where she continued doing sex work, as well:

A man came for [sexual] services. But there were four other men in the car and they said that they were going to kill me because they don't like trans women.<sup>447</sup>

Michelle, who said she had started carrying a knife after experiencing violence, said she managed to cut one of them and jump out of the car; she showed Human Rights Watch a scar on her forehead from her fall onto the road. She added:

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<sup>445</sup> Human Rights Watch interview with Felicia J. (pseudonym), Tijuana, January 31, 2020.

<sup>446</sup> Human Rights Watch interview with Michelle S., Washington, D.C., December 6, 2019.

<sup>447</sup> Ibid.

I didn't go to the police; they never do anything. A friend of mine was beaten and they almost took her eye out and she called the police and they never did anything.<sup>448</sup>

Carlos Valdés, executive director of the Guatemalan rights organization Lambda, anticipated that it would be almost impossible for Salvadoran and Honduran LGBT people transferred to Guatemala under the ACA to find steady, formal employment. He had already tried to help LGBT asylum seekers in Guatemala find work, to no avail:

Together with UNHCR, we have approached transnational companies that are open to hiring LGBT people, but they don't have the required (qualifications) because they didn't have access to education.<sup>449</sup>

Similar Asylum Cooperative Agreements between the United States and El Salvador and Honduras have not yet gone into effect.<sup>450</sup> But the US Department of State itself advises against travel to Honduras.<sup>451</sup> The State Department's annual Human Rights Report, published in March 2020, describes particular challenges faced by LGBT people in Honduras, including violence; the almost insurmountable challenges trans people face in finding employment; and other forms of discrimination.<sup>452</sup> The State Department's report on El Salvador also notes serious human rights abuses by the authorities, the prevalence

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<sup>448</sup> Human Rights Watch interview with Michelle S., Washington, D.C., December 6, 2019.

<sup>449</sup> Human Rights Watch interview with Carlos Valdés, Guatemala City, May 7, 2019.

<sup>450</sup> Priscilla Alvarez and Geneva Sands, "US Signs Asylum Deal with Honduras, the Latest in a String of Agreements with Central America," *CNN*, September 25, 2019, <https://www.cnn.com/2019/09/25/politics/united-states-honduras-asylum-agreement/index.html> (accessed September 11, 2020).

<sup>451</sup> The State Department travel advisory on Honduras, consistent with Human Rights Watch's findings based on interviews with LGBT Hondurans, reads: "Violent crime, such as homicide and armed robbery, is common. Violent gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking, is widespread. Local police and emergency services lack sufficient resources to respond effectively to serious crime." US Department of State, Bureau of Consular Affairs, "Honduras Travel Advisory," last updated August 6, 2020, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html> (accessed September 11, 2020).

<sup>452</sup> US Department of State, *Honduras 2019 Human Rights Report*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras> (accessed September 11, 2020). The report also notes that in 2019, "Organized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats and violence directed against human rights defenders, judicial authorities, lawyers, the business community, journalists, bloggers, women, and members of vulnerable populations."

of organized crime, and murders of trans women, all of which would pose a direct threat to LGBT asylum seekers transferred to El Salvador.<sup>453</sup>

### *Metering*

Prior to the closing of the US southern border as a result of the Covid-19 pandemic, asylum seekers from all countries arriving at the US border were subjected to metering, a Customs and Border Protection (CBP) policy that limited the number of asylum seekers that may enter the United States at each border crossing on a given day, creating backlogs that were sometimes many months long. CBP acknowledged that the intent of metering is to reduce the number of people who enter the United States; in other words, to force people to abandon their claims.<sup>454</sup> Metering has been suspended at most border crossings as a result of Covid-19, although many asylum seekers whose names were on metering lists prior to the border closures remain in border towns awaiting the opportunity to apply for asylum. In Tijuana, 9,600 people were on the list as of May 2020.<sup>455</sup> Physicians for Human Rights has described how the metering system dramatically cut entry to the United States, reducing entries at the San Ysidro/Tijuana border, for instance, from 40 to 100 asylum seekers per day in 2018 to roughly 25 people per day in September 2019.<sup>456</sup>

While waiting for their number to be called, asylum seekers are forced to wait in Mexico, usually remaining in border towns where they face difficulty obtaining employment, inadequate humanitarian aid, and high rates of violence, including abduction, rape, and murder by criminal gangs.

Carlitos B. described their experience being forced to stay in Tijuana after arriving from Guatemala with a caravan in 2018. When it became clear that metering would slow access

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<sup>453</sup> US Department of State, *El Salvador 2019 Human Rights Report*, <https://www.state.gov/wp-content/uploads/2020/02/EL-SALVADOR-2019-HUMAN-RIGHTS-REPORT.pdf> (accessed September 11, 2020).

<sup>454</sup> Human Rights First, “Refugee Blockade: The Trump Administration’s Obstruction of Asylum Claims at the Border,” December 2018, [https://www.humanrightsfirst.org/sites/default/files/December\\_Border\\_Report.pdf](https://www.humanrightsfirst.org/sites/default/files/December_Border_Report.pdf) (accessed September 11, 2020).

<sup>455</sup> Stephanie Leutert, Savitri Arvey, Ellie Ezzell, and Marianne Richardson, “Metering Update: May 2020,” The University of Texas at Austin Strauss Center for international Security and Law and the Center for U.S./Mexican Studies at the UC San Diego School of Global Policy & Strategy, [https://www.strausscenter.org/wp-content/uploads/MeteringUpdate\\_200528.pdf](https://www.strausscenter.org/wp-content/uploads/MeteringUpdate_200528.pdf) (accessed September 11, 2020).

<sup>456</sup> Physicians for Human Rights, “‘If I Went Back, I Would Not Survive.’ Asylum Seekers Fleeing Violence in Mexico and Central America,” October 9, 2019, <https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america> (accessed September 11, 2020).

to the US asylum process, a non-governmental organization helped LGBT caravan members to rent a house while awaiting processing. However, Carlitos B. said local residents were initially aggressive toward their new LGBT neighbors, accusing them of being a bad influence on children and (given that most of the LGBT people were gay men or trans women) on husbands.<sup>457</sup>

When we arrived, the neighbors in Tijuana said they didn't want us to be there, and they started to throw stones at us. The lawyers arrived and they called the police because there was a big crowd of people forming who didn't want us to stay in that house.<sup>458</sup>

Marina T., a trans woman from Honduras whom Human Rights Watch interviewed in Tijuana in January 2020, said:

We are risking our lives in Tijuana. I have heard of cases of other trans women being murdered here, so I'm afraid to go out, if I go out it's accompanied, and I have this phobia of the Mexican police after so much discrimination as a trans woman. I don't feel safe in Tijuana, I don't feel safe in any city in Mexico, given the discrimination that there is from the majority - not all Mexicans, but the majority discriminate against trans people.<sup>459</sup>

Kiana C., trans woman from El Salvador, described harassment by Mexican police:

If I go walking, they accuse me: 'Where are you going? What are you selling? Faggot! They think I'm selling sex even if I'm just walking. They insult me a lot.'<sup>460</sup>

The fear of violence leads some LGBT asylum seekers, especially trans women, to avoid leaving the shelters in Tijuana in which they are staying, in a kind of self-imposed house

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<sup>457</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

<sup>458</sup> Ibid.

<sup>459</sup> Human Rights Watch interview with Marina T., Tijuana, Mexico, January 31, 2020.

<sup>460</sup> Human Rights Watch interview with Kiana C., Tijuana, Mexico, January 31, 2020.

arrest. Shelley R., a trans woman from Guatemala whom Human Rights Watch interviewed at a shelter in Tijuana, said, “Because of insecurity we don’t leave the house, except to go to the clinic.”<sup>461</sup>

### *The “Remain in Mexico” Program*

Once an asylum seeker from the Northern Triangle (as well as other Spanish-speaking countries) physically crosses the border and registers their intention to claim asylum with a Customs and Border Patrol (CBP) agent, CBP may decide to place them in the so called Migrant Protection Protocol (MPP), better known as the “Remain in Mexico” program, launched by the Department of Homeland Security in January 2019. Human Rights Watch has filed a complaint with the Department of Homeland Security’s Office of Inspector General about the dire and at times life-threatening conditions the policy forces upon people,<sup>462</sup> and has repeatedly investigated and reported on the human rights violations caused by the policy.<sup>463</sup>

Many cities in which asylum seekers are forced to wait while in Mexico have high rates of kidnapping, extortion, and violence. Some of these cities have recently been or are currently subject to travel advisories by the US Department of State, due to the risk of kidnapping and other crime.<sup>464</sup> One trans woman told media she was kidnapped and raped while waiting for an asylum interview in Matamoros, Tamaulipas under “Remain in Mexico.”<sup>465</sup>

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<sup>461</sup> Human Rights Watch interview with Shelley R., Tijuana, Mexico, January 31, 2020.

<sup>462</sup> “US: Investigate ‘Remain in Mexico’ Program,” Human Rights Watch news release, June 2, 2020, <https://www.hrw.org/news/2020/06/02/us-investigate-remain-mexico-program>.

<sup>463</sup> “US Move Puts More Asylum Seekers at Risk,” Human Rights Watch news release, September 25, 2019, <https://www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk>; “US: COVID-19 Policies Risk Asylum Seekers’ Lives,” Human Rights Watch news release, April 2, 2020, <https://www.hrw.org/news/2020/04/02/us-covid-19-policies-risk-asylum-seekers-lives>; Michael García Bochenek, “US: ‘Remain in Mexico’ Program Harming Children,” Human Rights Watch dispatch, February 12, 2020, <https://www.hrw.org/news/2020/02/12/us-remain-mexico-program-harming-children>; Human Rights Watch, “Q&A: Trump Administration’s ‘Remain in Mexico’ Program,” January 29, 2020, <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>; “US: Asylum Seekers Returned to Uncertainty, Danger in Mexico,” Human Rights Watch news release, July 2, 2019, <https://www.hrw.org/news/2019/07/02/us-asylum-seekers-returned-uncertainty-danger-mexico>.

<sup>464</sup> Human Rights Watch, “Q&A: Trump Administration’s ‘Remain in Mexico’ Program,” <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>.

<sup>465</sup> Reynaldo Leños Jr., “LGBTQ Migrants Face Unique Dangers When U.S. Rejects And Returns Them To Mexico,” *Texas Public Radio*, September 9, 2019, <https://www.keranews.org/post/lgbtq-migrants-face-unique-dangers-when-us-rejects-and-returns-them-mexico> (accessed September 11, 2020).

A DHS memo exempts “individuals from vulnerable populations ... on a case-by-case basis.” In practice, exemptions for people with vulnerabilities have been inconsistent. Advocates and lawyers have found people with mental health conditions and LGBT people who were placed in the program and returned to Mexico.<sup>466</sup> Using the pretext of Covid-19, DHS has suspended all MPP hearings, meaning that those already placed in MPP and waiting in Mexico for their cases to be processed in the United States now have to wait indefinitely.

### *Prompt Asylum Claim Review (PACR)*

In October 2019, the US Department of Homeland Security piloted two new programs for “expedited removal,” designed to limit the right to asylum, at the El Paso border crossing.

Under the Prompt Asylum Claim Review (PACR), applying to individuals from countries other than Mexico, and the Humanitarian Asylum Review Process (HARP), an identical program applying to Mexican nationals, Customs and Border Patrol (CBP) itself detained asylum seekers after apprehending them at the border, rather than transferring them to ICE custody. CBP agents, rather than ICE officials, conducted credible fear interviews (threshold interviews for determining asylum eligibility). Prior to PACR and HARP, Human Rights Watch had documented CBP’s failure to follow US law when screening asylum seekers.<sup>467</sup> In February 2020, CBP’s acting commissioner testified before Congress that DHS had expanded the programs beyond El Paso to most Southern border crossings and put more than 3,700 migrants through the HARP and PACR expedited deportation programs.<sup>468</sup>

Before the programs were suspended in March 2020, lawyers and human rights organizations reported that Central American asylum seekers in PACR were held in poor

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<sup>466</sup> Human Rights Watch, “Q&A: Trump Administration’s ‘Remain in Mexico’ Program,” <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>; Molly Hennessy-Fiske, “For Transgender Migrants Fleeing Death Threats, Asylum in the U.S. is a Crapshoot,” *Los Angeles Times*, October 29, 2019, <https://www.latimes.com/world-nation/story/2019-10-29/trump-administration-returns-vulnerable-lgbt-asylum-seekers-to-mexico> (accessed September 11, 2020).

<sup>467</sup> Human Rights Watch, “*You Don’t Have Rights Here*”: *US Border Screening and Returns of Central Americans to Risk of Serious Harm*, October 16, 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>.

<sup>468</sup> “A Timeline of the Trump Administration’s Efforts to End Asylum,” National Immigrant Justice Center, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-04/04-01-2020-asylumtimeline.pdf>, p. 5.

conditions in CBP custody and rushed through “credible fear” interviews in a matter of days, usually without any access to a lawyer.<sup>469</sup> The expedited process created conditions by which traumatized individuals, including LGBT victims of violence, may have been discouraged to speak openly about the persecution that they have fled. If LGBT asylum seekers from the Northern Triangle were to be placed into PACR, there is a manifest risk that CBP agents would not provide them an adequate opportunity to explain the risk of persecution they face on the grounds of gender identity or sexual orientation.

### *Proposed Changes in the Refugee Definition*

On June 15, 2020, the Trump administration proposed a new asylum regulation that would radically change long-established definitions and standards under US asylum law.<sup>470</sup> Among other changes that would likely have an extremely negative impact on the ability of LGBT asylum seekers to present their claims and have them fairly decided is a provision that would exclude evidence in support of an asylum claim if the adjudicator thought it promoted a cultural stereotype against a country or a person.<sup>471</sup> This provision (and other parts of the proposed regulation) seek to codify an opinion from then-Attorney General Jeff Sessions in *Matter of A-B-* and *Matter of A-R-C-G-*, in which Sessions expressed criticism of the Board of Immigration Appeals for advancing a “negative cultural stereotype” that Guatemala has a “culture of machismo and family violence.”<sup>472</sup> That means evidence of persecution—particularly when the applicant is providing evidence of persecutory intent—could be excluded for fear that it could be seen as “promoting cultural stereotypes.”

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<sup>469</sup> “A Timeline of the Trump Administration’s Efforts to End Asylum,” National Immigrant Justice Center, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-04/04-01-2020-asylumtimeline.pdf>, p. 5.

<sup>470</sup> Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, Proposed Rule by the Department of Homeland Security and the Executive Office for Immigration Review, June 15, 2020, <https://www.federalregister.gov/documents/2020/06/15/2020-12575/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review> (accessed September 16, 2020). Consistent with the 1967 Protocol Relating to the Status of Refugees, the Immigration and Nationality Act (INA) section 101(a)(42), 8 U.S.C. 1101(a)(42) defines a refugee as “any person who is outside of any country of such person’s nationality...who is unable or unwilling to return to...that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

<sup>471</sup> Human Rights Watch, “Comment on Proposed Changes to Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear,” July 15, 2020, <https://www.hrw.org/news/2020/07/15/comment-proposed-changes-procedures-asylum-and-withholding-removal-credible-fear>.

<sup>472</sup> US Department of Justice, *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1070866/download> (accessed September 15, 2020), p. 336 n. 9.



The provision could be used to block people persecuted on account of their gender, sexual orientation, race or religion from being able to make their case. For example, Fernanda Vallejo, a transgender woman from San Pedro Sula, Honduras, gave this account to Human Rights Watch in 2009 regarding the persecution she experienced:

My dad was truly a macho. My every feminine action was reprimanded by beatings – so instead of receiving love, I received beatings...Even though he [my dad] mistreated me, I loved my father. I understood him. To him his last name meant work and respect and in my mind I felt guilty and I asked, ‘God, why did you make me this way?’ I did not want to shame my father.”<sup>473</sup>

Vallejo speaks of her father as macho, about a culture of shame. Finding that such testimony promotes cultural stereotypes, a judge could dismiss the evidence showing the intent of her abuser and of the society that tolerates such abuse.

The proposed regulation also provides a laundry list of circumstances that would generally not be considered sufficient to demonstrate membership in a particular social group, one of the protected grounds in the refugee definition. One of the nine excluded social groups are people involved in “interpersonal disputes of which governmental authorities were unaware or uninvolved.” As this report shows, police and other authorities often ignore LGBT people who are victimized by domestic abuse or attacks by members of the public and remain “uninvolved” in what they may dismiss as an “interpersonal dispute.” By dismissing violence against LGBT people as “interpersonal,” the proposed rule fails to recognize that gender-based violence is a social means to repress and subordinate rather than an individual problem, requiring comprehensive responses, including state measures to comply with obligations to prevent, investigate, prosecute and punish.<sup>474</sup>

## Risks to LGBT Asylum Seekers in Mexico

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<sup>473</sup> Human Rights Watch, *Not Worth a Penny*.

<sup>474</sup> Convention on the Elimination of All Forms of Discrimination Against Women, General recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, July 26, 2017, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en) (accessed September 11, 2020).

When Sandra C., a 24-year-old lesbian from El Salvador, was forced to flee her country due to threats and extortion from MS-13 in March 2018, she originally sought asylum in Mexico. She received refugee status in July or August, she said, and found work selling tacos in Tapachula. But in September, four men cornered Sandra and two of them raped her:

One time I came home from work at around 6 p.m., and when I got off the bus I saw four guys there and they started to follow me. They took me to a vacant lot, where they abused me.... Two of them raped me. They are from the same gang [Mara Salvatrucha]—they had the same three points on their hands, they wear blue and black, they knew who I was, and they said, ‘We’re going to show you what it is to be with a man.’ That’s when I decided to come here [to the United States], because I was not safe anywhere there.<sup>475</sup>

Sandra did not file a complaint in Mexico. She said, “I left three days later.... I didn’t know if I could trust the police.”<sup>476</sup>

The Trump administration’s restrictive asylum policies seem premised on the idea that asylum seekers from the Northern Triangle, if their claims are legitimate, should seek asylum in Mexico or elsewhere along their journey.<sup>477</sup> But for many LGBT people interviewed by Human Rights Watch, like Sandra C., Mexico was not a viable option. Homophobic violence, alongside an ineffective criminal justice system, left Sandra C. exposed to significant risk.

Basilio A., a 24-year-old gay man from Guatemala, had also intended to remain in Mexico when he fled there in 2017 after his father beat him for being gay. He never formally applied for asylum, but spent two years in Tapachula working in tortilla shops and waiting tables. But then he too was raped. Human Rights Watch interviewed him in Tijuana in January 2020, where he recounted:

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<sup>475</sup> Human Rights Watch interview with Sandra C. (pseudonym), Los Angeles, December 10, 2019.

<sup>476</sup> *Ibid.*

<sup>477</sup> Maya Rhodan, “President Trump Threatened to Turn Back Caravan Migrants If They Don’t Claim Asylum in Mexico. That’s Not Legal,” *Time*, October 22, 2018, <https://time.com/5431447/donald-trump-threat-turn-back-caravan-migrants-not-legal> (accessed September 11, 2020).

I never thought about coming here. But one time, leaving work at around 9 p.m., I saw a black car and a girl driving the car said, ‘What’s up? Where are you going?’ She offered to drive me home. I said, ‘I don’t know you.’ She said, ‘Come on, I’ll give you a lift.’

I got in the car and I saw there were two other people. The car had tinted windows. She said they were her friends. They told me their names were Brian and Jose. Then they covered my nose with a cloth, and I lost consciousness.

When I woke up I was in the middle of the road, in the highway that goes to Puerto Madero. I had been beaten, they had taken all my things and left my [empty] backpack next to me. My buttocks were hurting and I was bleeding from the butt.... I didn’t tell anyone. I was afraid to go to the police because I didn’t have any documents. I never imagined this could happen to me. I stayed there for months, and worked in other *tortillerías*, but I was always afraid.<sup>478</sup>

Marina T., a 28-year-old trans woman from Honduras, was also at risk in Tapachula. Unlike Sandra C. and Basilio A., Marina T. intended to come to the United States, where she believed she could find safety as a trans woman, but she spent three months waiting for her humanitarian visa in Tapachula in order to be able to traverse Mexico legally. On two occasions, Mexican men attempted to rape her. Both times, she ran away. Marina T. believed she was targeted because of her gender identity. For most of the remainder of her time in Tapachula, she said, she hid in her apartment, afraid to go out.<sup>479</sup>

Other trans women told Human Rights Watch that reports of high levels of “transfemicides,” or targeted killings of trans women, deterred them from staying in Mexico. Kiana C., from El Salvador, whom Human Rights Watch interviewed in Tijuana when she had spent eight months in Mexico waiting to cross into the United States to seek asylum, said, “Mexico is not safe for trans women. I see all the news about trans women

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<sup>478</sup> Human Rights Watch interview with Basilio A., Tijuana, Mexico, January 31, 2020.

<sup>479</sup> Human Rights Watch interview with Marina T., Tijuana, Mexico, January 31, 2020

being killed.”<sup>480</sup> Both Kiana C. and Felicia J., a trans woman from Honduras interviewed separately in Tijuana, referred to reports of murders of trans women in the state of Veracruz, where Alaska Ponce Contreras was killed in 2018.<sup>481</sup> Felicia J. said in relation to these reports of violence against trans women, “We are all traumatized. I wake up crying at night.”<sup>482</sup>

The risk of violence facing LGBT asylum seekers in Mexico is accompanied by the risk of discrimination. At a shelter for LGBT asylum seekers in Tijuana, a coordinator told Human Rights Watch that some residents had managed to obtain employment while waiting in Mexico under the metering system, but that for trans women, it was particularly difficult to find employment.<sup>483</sup>

Finding shelter, for LGBT asylum seekers traversing Mexico as well as those hoping to stay there, may also pose a challenge. Alé D., a trans woman from Guatemala, said that in early 2019, during her trek to the US, she was expelled from an Evangelical church-run shelter in Matamoros because of her gender identity.<sup>484</sup>

Carlitos B., a 23-year-old non-binary person from Guatemala who made it to Los Angeles and sought asylum, said they felt freer in the United States than in Mexico.

Some people in the caravan stayed in Mexico and asked for asylum. I came here [to the United States] because in Mexico there are also people who don’t accept LGBT people—yes, there are some places that are accepting, but they are rare. Here, there are laws that help LGBT people. At least that’s what I think. You can be a little freer here.<sup>485</sup>

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<sup>480</sup> Human Rights Watch interview with Kiana C., Tijuana, January 31, 2020.

<sup>481</sup> Human Rights Watch interviews with Kiana C. and Felicia J., Tijuana, January 31, 2020. See also “On Transgender Day of Remembrance, the IACHR Calls on States to Provide Comprehensive Protection for the Lives of Trans and Gender-Diverse People,” OAS news release, November 20, 2018, [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/247.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/247.asp) (accessed September 11, 2020).

<sup>482</sup> Human Rights Watch interview with Felicia J., Tijuana, January 31, 2020.

<sup>483</sup> Human Rights Watch interview with Chris Chambers, Tijuana, January 31, 2020.

<sup>484</sup> Human Rights Watch interview with Alé D., Washington, D.C., December 5, 2019.

<sup>485</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

## VI. Obligations Under International Human Rights Law

### Obligations of El Salvador, Guatemala, and Honduras to Address Anti-LGBT Violence and Discrimination

The Inter-American system is among the most developed regional human rights systems when it comes to articulating the basis for rights and protections related to sexual orientation and gender identity. As the Inter-American Commission on Human Rights (the “Commission”) has stated:

[t]he principles of non-discrimination, equality before the law, the right to life and personal integrity are founding principles of the regional and universal human rights system, with legal duties that are of particular importance to lesbian, gay, bisexual, trans, and intersex (hereinafter ‘LGBTI’) persons in the Americas.<sup>486</sup>

The Inter-American Court of Human Rights (“the Court”) has ruled that sexual orientation and gender identity are considered protected grounds under Article 1.1 of the American Convention on Human Rights (“the Convention”), which protects all rights recognized within the convention without discrimination on any grounds.<sup>487</sup>

Article 4 of the Convention protects the right to life, echoing Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which El Salvador, Guatemala, and Honduras are all states party. Article 5 protects each person’s “physical, mental, and moral integrity” and prohibits torture and cruel, inhuman and degrading punishment or

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<sup>486</sup> Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, OEA/Ser.L/V/II.170 Doc. 184, December 7, 2018, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf> (accessed September 11, 2020).

<sup>487</sup> Inter-American Court of Human Rights, *Case of Atala Riffo & Daughters v. Chile*, Judgment of February 24, 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf) (accessed September 11, 2020), para 91; see also Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>, pp. 26-28.

treatment.<sup>488</sup> No one should live with the constant threat of violence, and states are obligated under international and regional law to protect the right to security of the person and the right to personal integrity.

The Organization of American States (OAS), the main regional governance body in the Western Hemisphere, has recognized the obligation of member states to address violence against LGBT people. The OAS's General Assembly has issued annual resolutions since 2013 urging member states to produce data on violence based on sexual orientation and gender identity, with a view to fostering public policies to prevent such violence.<sup>489</sup>

The Inter-American Commission on Human Rights, created by the OAS to serve as the principal hemispheric human rights body, has specified that states should “make efforts and allocate sufficient resources to collect and analyze disaggregated statistical data in a systematic manner on the prevalence and nature of violence and bias discrimination against LGBTI persons, or those perceived as such.”<sup>490</sup>

The Court has found that the right to life under Article 4 of the American Convention, in conjunction with Article 1(1), is comprised of both negative and positive obligations.<sup>491</sup> States must not only ensure that no person be arbitrarily deprived of their life, but must also adopt all appropriate measures to “prevent, try, and punish the deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents.”<sup>492</sup>

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<sup>488</sup> American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 22, 1969, ratified by El Salvador on June 20, 1978, Guatemala on April 27, 1978, and Honduras on September 5, 1977, <https://www.cidh.oas.org/basicos/127merica/basic3.american%20convention.htm>, arts. 4, 5; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by El Salvador in 1967, Guatemala in 1992 and Honduras in 1997, art. 6.

<sup>489</sup> OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, June 6, 2013, [http://www.oas.org/en/iachr/lgtbi/docs/AG-RES\\_2807\\_XLIII-O-13.pdf](http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf) (accessed September 11, 2020).

<sup>490</sup> Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>.

<sup>491</sup> Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_101\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf) (accessed September 11, 2020), para. 153.

<sup>492</sup> *Ibid.*

As such, the court held that safeguarding the right to life requires:

States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.<sup>493</sup>

The Commission has further emphasized that “any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international law, to actions or omissions by any public authority constitutes an act attributable to the State.”<sup>494</sup>

The UN Human Rights Committee, in overseeing states’ compliance with the ICCPR, emphasizes that states’ positive obligations:

...will only be fully discharged if individuals are protected by the State, not just against violations of ... rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights in so far as they are amenable to application between private persons or entities.<sup>495</sup>

The UN Office of the High Commissioner for Human Rights notes that although hate-motivated violence against LGBT people is typically perpetrated by non-state actors, “failure by State authorities to investigate and punish this kind of violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person.”<sup>496</sup>

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<sup>493</sup> Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_101\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf), para. 156.

<sup>494</sup> Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, [https://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm#\\_ftnref21](https://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm#_ftnref21) (accessed September 11, 2020), para 39.

<sup>495</sup> UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), <https://www.refworld.org/docid/478b26ae2.html>, para. 8.

<sup>496</sup> UN Office of the High Commissioner, “Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law,” October 2012, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (accessed September 11, 2020), p. 14.

Under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, states party are obligated to adopt measures to combat violence against women.<sup>497</sup> The Inter-American Commission on Human Rights has interpreted the Belém do Pará convention, which defines “violence against women” as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women” as applicable to transgender women.<sup>498</sup>

The Inter-American Court of Human Rights has ruled that in investigating and prosecuting cases of violence, judicial processes should be attentive to the specific vulnerabilities of LGBT people. In March 2020, in *Azul Rojas Marín y Otra vs. Perú*, a case involving sexual violence and other forms of torture of a trans woman in prison, the Court held that when investigating violent acts, state authorities “have a duty to take all reasonable measures to uncover whether there are possible discriminatory grounds.” No facts can be omitted from this investigation if they can lead to establishing that the violence was motivated by discrimination; failure to investigate possibly discriminatory motives could be a violation of the non-discrimination provision in Article 1(1) of the American Convention.<sup>499</sup>

In its determination, the court ordered Peru to establish a specific protocol for investigation and administration of justice in cases involving allegations of violence against LGBTI people. Such a protocol should include, the court ruled, the obligation to be sensitive to victims’ gender identity and sexual orientation, not engage in stereotyping or other discriminatory treatment, avoid retraumatization, and stipulate methods to

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<sup>497</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), adopted June 9, 1994, entered into force March 9, 1995, <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> (accessed September 16, 2020), arts. 7-8. El Salvador, Guatemala and Honduras all ratified the treaty in 1995.

<sup>498</sup> Inter-American Commission on Human Rights, Report on Merits, Vicky Hernández and Family, Honduras, OEA/Ser.L/V/II.170 Doc. 179, Report No. 157/18, Case 13.051, December 7, 2018, <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf> (accessed September 11, 2020), paras. 80, 98.

<sup>499</sup> Inter-American Court of Human Rights, *Case of Azul Rojas Marín et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of March 12, 2020, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_402\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf) (accessed September 11, 2020), para. 196.



determine whether crimes of sexual violence or torture were perpetrated due to anti-LGBTI animus.<sup>500</sup>

Regional human rights law is equally firm in its condemnation of all forms of discrimination against LGBT people. The OAS General Assembly resolution cited above, in addition to calling for data collection with regard to violence, calls on member states to adopt public policies against discrimination by reason of sexual orientation and gender identity or expression.<sup>501</sup>

In November 2017, the Inter-American Court of Human Rights issued an advisory opinion, in response to a query from Costa Rica about its obligations under the American Convention, stating that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression, states must establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements such as medical or psychiatric evaluation or divorce.<sup>502</sup> To date, none of the Northern Triangle countries have done so.

In February 2020, the Inter-American Convention Against All Forms of Discrimination and Intolerance entered into force. It explicitly protects against discrimination on the grounds of gender identity, gender expression and sexual orientation alongside other grounds including language, cultural identity, migrant or refugee status, and socioeconomic status. It has been signed by 12 countries and ratified by Mexico and Uruguay. El Salvador, Guatemala, and Honduras are among the countries that have neither signed nor yet ratified the convention.<sup>503</sup>

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<sup>500</sup> Ibid., paras. 241-244; “Groundbreaking Ruling: Inter-American Court Finds Peru Responsible for Discriminatory Torture Against an LGBTI Person and Orders the State to Combat Discrimination,” Redress news release, April 7, 2020, <https://redress.org/news/groundbreaking-ruling-inter-american-court-finds-peru-responsible-for-discriminatory-torture-against-an-lgbti-person-and-orders-the-state-to-combat-discrimination> (accessed September 11, 2020).

<sup>501</sup> OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, [http://www.oas.org/en/iachr/lgtbi/docs/AG-RES\\_2807\\_XLIII-O-13.pdf](http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf), art. 2.

<sup>502</sup> Inter-American Court of Human Rights, Advisory Opinion OC-24/17, [http://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf), pp. 43-72.

<sup>503</sup> Inter-American Convention Against All Forms of Discrimination and Intolerance, adopted June 5, 2013, entered into force February 20, 2020, [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-69\\_discrimination\\_intolerance\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp) (accessed September 11, 2020).

The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity address both violence and discrimination against LGBT people. The principles assert that states should take all necessary measures to prevent violence and harassment related to sexual orientation or gender identity, including through vigorous investigation, redress to victims, and awareness-rising campaigns to reduce bias.<sup>504</sup>

The Yogyakarta Principles also call on states to ensure all human rights without discrimination on the basis of sexual orientation or gender identity, including the right to work and to education.<sup>505</sup> They urge states to ensure that procedures exist whereby a person’s self-defined gender identity can be indicated on all State-issued identity documents that include gender markers.<sup>506</sup>

As noted by the UN Human Rights Committee, the term “discrimination” should be understood broadly, “to imply any distinction, exclusion, restriction or preference... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>507</sup> Regardless of intent, policies and practices that result in disparate impacts on particular groups of people—including LGBT people—can constitute discrimination which states are obligated to eliminate. The UN Committee on Economic, Social and Cultural Rights, the authoritative body that interprets the UN Convention on Economic, Social and Cultural Rights, has also stressed that states are obligated to eliminate not only formal, but also de facto or substantive, discrimination, noting:

Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes

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<sup>504</sup> International Commission of Jurists, *The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, March 2007, [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf) (accessed September 11, 2020), principle 5.

<sup>505</sup> *Ibid.*, principles 12, 16.

<sup>506</sup> *Ibid.*, principle 3.

<sup>507</sup> UN Human Rights Committee, *CCPR General Comment No. 18, Non-Discrimination*, November 10, 1989, <https://www.refworld.org/docid/453883fa8.html> (accessed September 11, 2020), para. 7.

which cause or perpetuate substantive or de facto discrimination... In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.<sup>508</sup>

Accordingly, to effectively curtail systemic discrimination, it is critical that states prioritize adopting comprehensive civil and administrative laws banning discrimination. While the use of the criminal law is warranted when discrimination manifests itself in particular egregious forms—notably, acts of violence or incitement to violence—its focus on criminal intent, which needs to be established beyond a reasonable doubt, is inadequate to capture and sanction much discriminatory behavior.<sup>509</sup> This is particularly true when discrimination is widespread as part of policies and practices. By contrast, civil and administrative legal frameworks are better designed than the criminal law to give greater weight to the consequences of particular actions, and can help address and sanction harmful actions and practices that impact groups or large numbers of people in a way that promotes good systems and policies.

States are also obligated to adopt robust economic and social policies in various areas—education, health, and employment, among others—to counter societal discrimination and its harmful effects, and affirmatively ensure the equal rights of vulnerable groups, such as LGBT people in the Northern Triangle.

## Obligation of the United States Not to Return Refugees

Under US law and the 1967 Protocol Relating to the Status of Refugees, to which the United States is party, the United States may not return asylum seekers to face threats to their lives or freedom without: (1) affording them an opportunity to apply for asylum or for protection against facing the threat of torture; and (2) conducting a full and fair examination of those claims.

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<sup>508</sup> UN Committee on Economic, Social and Cultural Rights, 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), July 2, 2009, E/C.12/GC/20, <https://www.refworld.org/docid/4a60961f2.html> (accessed September 11, 2020). El Salvador, Honduras, and Guatemala have all ratified the Convention on Economic, Social and Cultural Rights.

<sup>509</sup> In many countries, including in the Northern Triangle, governments have used the criminal law in ways that disproportionately impact particularly vulnerable or marginalized groups, including LGBT people, raising further concerns about its effectiveness and appropriateness as the primary tool to address discrimination.

The United States is obligated to uphold the central provisions of the 1951 Refugee Convention by its accession to the Refugee Convention's 1967 Protocol.<sup>510</sup> The US government passed the Refugee Act of 1980 in order to bring the country's laws into conformity with the Refugee Convention and Protocol, by incorporating into US law the convention's definition of a "refugee" as a person with a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion, and by incorporating the principle of non-return (also called nonrefoulement), which prohibits the return of people whose lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.<sup>511</sup>

There is no right to be granted asylum under international law, but there is a right to seek asylum.<sup>512</sup> On its face, US law generally recognizes this right. The law provides that any person "physically present in the United States or who arrives in the United States ... irrespective of such alien's status, may apply for asylum...."<sup>513</sup>

However, the policies instituted by the Trump administration that are discussed in Section V, including the CDC summary expulsion order, the Guatemala Asylum Cooperation Agreement, the metering system, the Migrant Protection Protocol, the Prompt Asylum Claims Review, and the attempt at a full-scale asylum ban for those crossing through third countries have effectively nearly eviscerated the right to seek asylum. Each of these policies alone, but also in combination, creates a significant risk of refoulement of refugees because the policies prevent US authorities from assessing each individual's

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<sup>510</sup> Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, <http://www.unhcr.org/3b66c2aa10.html> (accessed September 11, 2020); U.N. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 268, entered into force October 4, 1967. The United States acceded to the 1967 Protocol in 1968.

<sup>511</sup> Refugee Act of 1980, Pub. L. No. 96- 212, 94 Stat. 102 (1980), <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf> (accessed September 15, 2020). As the Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987), <https://supreme.justia.com/cases/federal/us/480/421/> (accessed September 15, 2020). See also, *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into US law through the Refugee Protocol and the Refugee Act of 1980), <https://supreme.justia.com/cases/federal/us/467/407/> (accessed September 15, 2020).

<sup>512</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 14.1.

<sup>513</sup> United States Code, 2011 Edition, Title 8 - ALIENS AND NATIONALITY, Sec. 1158, <https://www.govinfo.gov/content/pkg/USCODE-2011-title8/html/USCODE-2011-title8-chap12-subchapII-partI-sec1158.htm> (accessed September 15, 2020).

asylum claim, which is the means by which refugees can be identified and protected against return to persecution or other serious harm.

Under the Guatemala Asylum Cooperation Agreement, some people who have a well-founded fear of persecution appear to be abandoning their claims and returning to their home countries where they are at real risk of serious harm. Given Guatemala's incapacity to provide effective protection, and the risk that some LGBT Hondurans and Salvadorans transferred to Guatemala under the agreement would face the threat of serious harm either in Guatemala or after returning to their home countries, the United States violates its domestic and international nonrefoulement obligations by not examining the asylum claims of LGBT Hondurans and Salvadorans it is forcibly sending to Guatemala. Given security conditions for LGBT people and weaknesses in the asylum system in El Salvador and Honduras, the same human rights obligations will likely be breached if the United States transfers asylum seekers to Honduras and El Salvador under Asylum Cooperative Agreements that have been signed, but not implemented, with those countries.<sup>514</sup>

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<sup>514</sup> Refugees International, "Refugees International Opposes Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras," December 23, 2019, <https://www.refugeesinternational.org/reports/2019/12/23/refugees-international-opposes-asylum-cooperative-agreements-with-guatemala-el-salvador-and-honduras> (accessed September 11, 2020).

## VII. Dreams of a Better Future

The LGBT asylum seekers from the Northern Triangle whom Human Rights Watch interviewed in the United States and Mexico are dreaming of a better future: a future in which they can be treated with respect and dignity regardless of their sexual orientation or gender identity; a future free from violence; a future in which they can study and work without fear of discrimination. For far too many asylum seekers, especially those who are caught in limbo in Mexico while the Trump Administration unveils one policy after another that further restricts their options, those dreams remain out of reach.

LGBT asylum seekers who have made it into the United States expressed eagerness to integrate and establish themselves. Carlitos B., a non-binary person from Guatemala, told Human Rights Watch researchers when we interviewed them in Los Angeles in 2019:

I'm waiting for my work permit. I want to do everything legally, I want to work, be able to rent a room. Maybe I will look for work in a restaurant. I used to help out in a restaurant. Right now I'm studying English at night from 6 to 9 p.m. In the morning sometimes I go running in the mountains.<sup>515</sup>

Marina T., a trans woman from Honduras who was waiting for her metering number to be called in Tijuana when Human Rights Watch interviewed her, said:

If I get asylum in the US, I will go wherever I have a sponsor. I want to become independent, find work, finish my studies, and live a life full of peace, full of love, the love that I never received from my family in Honduras. I don't want to keep suffering.<sup>516</sup>

The governments of El Salvador, Guatemala, and Honduras bear responsibility for creating or tolerating the conditions that forced people like Carlitos B. and Marina T. to flee their countries. They should act urgently to rein in violence and discrimination on the grounds of sexual orientation and gender identity, making it possible for the hundreds of thousands

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<sup>515</sup> Human Rights Watch interview with Carlitos B., Los Angeles, December 9, 2019.

<sup>516</sup> Human Rights Watch interview with Marina T., Tijuana, Mexico, January 31, 2020.

of LGBT people who remain in the Northern Triangle to contemplate a life in which they do not have to choose between risking violence and discrimination and relinquishing home.

The United States should ensure that once people like Carlitos B. and Marina T. arrive at the Southern border, they are given an opportunity to access a safe space that will allow them to realize their dreams.

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## “Every Day I Live in Fear”

### Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States

LGBT people in El Salvador, Guatemala, and Honduras – the Northern Triangle of Central America – face a complex web of violence and discrimination that threatens their physical safety and limits their life choices. This includes violence at the hands of gangs, law enforcement officials, and their own families, which leads many LGBT people from the Northern Triangle to undertake perilous journeys to seek asylum in the United States. But the US government has increasingly closed doors to them, implementing a series of policies that restrict access to asylum and most recently closing the southern border to asylum seekers entirely, using Covid-19 as a pretext. This report, based on interviews with 116 LGBT people in and from the Northern Triangle, documents the violence LGBT people face there, the failure of their own governments to protect them, and the further abuses they face if they attempt to seek asylum in the United States. It calls on the US government to reverse life-threatening policies that restrict access to asylum, and on the Northern Triangle governments to adopt robust laws and policies to prevent and respond to anti-LGBT violence and discrimination.

*(above) A transgender woman shows a photograph of Camila Díaz, a Salvadoran trans woman whom she met while migrating to the United States. Both women were eventually deported, and Díaz was subsequently killed by Salvadoran police.*  
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*(front cover) LGBT people from Central America, many fleeing persecution in their countries of origin, traveled through Mexico in November 2018 on their way to seek asylum in the United States.*  
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