

Bias-Motivated Violence Against LGBT People in El Salvador

Introduction

In May 2016 a trans woman in Colón, El Salvador was beaten and strangled to death. Unknown assailants skinned her face and threw her body in a ditch on the side of a highway.¹ In June Human Rights First traveled to El Salvador and spoke with trans activist Karla Avelar, the director of COMCAVIS TRANS, a local organization that works to advance the human rights of lesbian, gay, bisexual, and transgender (LGBT) Salvadorans and for the empowerment of trans people. Avelar spoke about this and other barbaric killings of members of the LGBT community in the country.

Human Rights First traveled to El Salvador to learn about the situation facing LGBT people and has continued partnering with Salvadoran human rights defenders on this issue. This brief will discuss the bias-motivated violence against LGBT people in El Salvador and outline recommendations for the U.S. government to support civil society efforts to combat it.

Legal Landscape

Homosexuality is not criminalized in El Salvador. The country's constitution protects a person's "right to life [and] physical integrity." It also establishes the equality of all persons before the law.² El Salvador has ratified the International Covenant on Civil and Political Rights (ICCPR), which has been interpreted to include protection from discrimination for LGBT people.³

The country is also party to the Convention on the Elimination of All Forms of Discrimination Against

Women (CEDAW). The CEDAW Committee in 2010 affirmed that "discrimination of women based on sex and gender is inextricably linked with other factors that affect women" including "sexual orientation and gender identity."⁴ El Salvador is also party to other major international treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the American Convention on Human Rights.

Article 144 of the Salvadoran Constitution recognizes the legality of international treaties adopted by the country and gives precedence to international law in case of a conflict between treaty obligations and domestic law.

Legal Protections for LGBT Salvadorans

In recent years El Salvador's government has enacted several positive measures to protect members of the LGBT community. While in office in 2010, Salvadoran President Mauricio Funes signed Executive Order 56, prohibiting discrimination based on sexual orientation and/or gender identity by executive branch agencies.⁵ That same year, the government created the Sexual Diversity Office within the Ministry of Social Inclusion. The office was created to ensure the directives in the executive order are further publicized and fully enacted.⁶

The Holistic Law for a Life Free of Violence for Women, promulgated in 2011, guarantees all women's right to a life free from violence and prohibits discrimination in the application of the law, explicitly including "sexual identity" as one of the categories protected from discrimination.⁷ The Law of Equality, Equity, and Eradication of Discrimination against Women was formulated in harmony with

CEDAW principles and prohibits discrimination against women.⁸

Most recently local LGBT civil society groups and their allies successfully advocated for enhanced hate crime penalties for murders and threats based on sexual orientation and gender identity, among other categories, in the penal code. The now-modified Article 129 of the code establishes penalties of up to 60 years in prison for aggravated homicide motivated by hate based on race, ethnicity, religion, political affiliation, gender identity, and gender expression, as well as sexual orientation. Article 155 establishes enhanced penalties for threats motivated by hate based on these same categories.⁹

Legal Vacuums

While the country's constitution, domestic laws, and treaty obligations afford certain implicit and explicit protections to LGBT people, many legal vacuums remain.

Executive Order 56 is an important step to prevent discrimination, but its mandate only extends to agencies under the executive branch, and does not apply to the judicial branch, legislative branch, or local government institutions.¹⁰

Article 3 of the constitution of El Salvador establishes the equality of all persons before the law. It goes on to state, "for the enjoyment of civil rights, there must not be restrictions based on differences in nationality, race, sex, or religion." This article omits sexual orientation and gender identity as well as other categories from explicit protection.

In a 2009 decision regarding a writ of *amparo*—a legal remedy in cases of the violation of constitutional rights—El Salvador's Supreme Court of Justice affirmed that the list of protections under Article 3 is not exhaustive but illustrative. Thus, those explicitly mentioned are not the only categories that can be considered the basis of protection from discrimination. The decision specifically affirmed that exclusion from the

enjoyment of fundamental rights based on sexual orientation is unconstitutional—as well as counter to El Salvador's international obligations.¹¹

The country lacks a general non-discrimination law to protect marginalized and vulnerable groups, including LGBT people. Karla Avelar also highlights the need for a gender identity law to fully protect the human rights of trans individuals in El Salvador. Such a law would be essential for members of the trans community to access legal documents that match their gender identity.

The REDLACTRANS, a network of Latin American trans organizations, notes that "the lack of legal recognition" of trans persons is one of the primary reasons the trans community "has suffered constant situations of exclusion, marginalization, and discrimination."¹²

In a 2013 joint report the Salvadoran Human Rights Ombudsman's office and the U.N. Development Programme note that the Law of Equality, Equity, and the Eradication of Discrimination against Women does not recognize the social and economic disadvantages that trans people face nor does it lay out criteria for including trans people and other members of the LGBT community.¹³

Bias-Motivated Violence

While the Salvadoran Human Rights Ombudsman's office has denounced certain cases of violence and discrimination against members of the LGBT community, there is no official government data on hate crimes or bias-motivated violence against LGBT people.

William Hernández, the director of Salvadoran LGBT organization Asociación Entre Amigos, cited an estimate that five hundred LGBT people have been killed in El Salvador since 1999.¹⁴ The estimate is derived from a nationwide analysis conducted by civil society organizations.

In 2014 former human rights ombudsman David Morales and former U.N. resident coordinator for El

Salvador Roberto Valent denounced a string of killings of LGBT people in the country. They noted a four hundred percent increase in hate crimes in the previous ten years and highlighted the evidence of torture in many cases of murders of LGBT people.¹⁵

COMCAVIS TRANS tracked 14 murders of LGBT people from January-May 2016. In the same period the organization also documented several cases of torture, rape, and attempted murder of LGBT Salvadorans.¹⁶ Karla Avelar says that these cases have neither been investigated nor have the perpetrators been brought to justice. She also notes that members of the National Civilian Police, the Metropolitan Police, and gang members are the primary perpetrators of human rights violations against LGBT people in the country.¹⁷

Many organizations cite lack of resources as a barrier to consistently tracking murders and violence against members of the LGBT community. Activists in the country say that the data they have collected does not likely to represent the total number of incidents of violence against LGBT people and that they may only have data for certain periods of time, given limited resources.

Despite a lack of consistent documentation, violence against LGBT people is an ongoing reality. Organizations and activists often use social media channels to denounce murders of and other violent acts against LGBT people, calling for a thorough investigation of these crimes.

Forced to Flee

Salvadoran activists highlight the increase in forced migration of LGBT people in the last few years. Many LGBT people are internally displaced, while others flee the country to escape threats and violence.¹⁸ Karla Avelar explains that COMCAVIS TRANS has been forced to take on the issue of forced migration.

Transgender Activist Killed

Transgender activist Francela Méndez of the Colectivo Alejandría, an organization that works to empower LGBT Salvadorans, was killed in May 2015 when she was visiting the home of a friend. Former human rights ombudsman David Morales denounced the murder as an expression of hate against members of the LGBT community. He called on the Office of the Attorney General to conduct a swift and nondiscriminatory investigation.¹⁹

The Inter-American Commission on Human Rights similarly condemned Mendez's murder and called on the state to follow investigative guidelines that will help determine whether Mendez's murder was related to her gender identity and/or her work as an LGBT human rights defender.²⁰

According to Karla Avelar, the case was not fully investigated and her death was simply linked to narco-trafficking without a determination as to whether it was related to her activism or her gender identity.

While the organization does not take a position on whether someone seeks asylum, they support individual asylum seekers who have fled the country, providing evidence of the dangers they would face if they returned to El Salvador.

Asociación Entre Amigos carries out similar work. In 2015, they documented and provided support for 32 cases of LGBT Salvadorans who fled to seek asylum. In 2016, they provided support for 22 cases of LGBT persons forced to flee the country because of persecution based on their sexual orientation and/or gender identity.²¹

Pride Marcher Brutally Beaten by Police

On June 27, 2015 trans man Alex Peña was brutally beaten by agents of the National Police Force as he returned home after the 2015 LGBT Pride March in San Salvador. The police intervened and attacked Peña after he had an argument with a bus driver. Agents also hurt Peña's friend, who was traveling with him.²²

Peña was arrested for attacking a police officer and resisting arrest. His friend was also arrested. At the police station, officers continued to beat him, with one of the attackers saying, "since you say you are a man, we are treating you like a man."²³ Peña was left with serious injuries. He was ultimately released, but was still charged.

In December 2015 he was declared innocent on all counts.²⁴ In October 2016 two of the agents involved in the attack were sentenced to prison. However, the officer accused of being the principal attacker was cleared of all charges.²⁵

Access to Justice

Former Salvadoran human rights ombudsman David Morales and the former U.N. resident commissioner for El Salvador Roberto Valent both recognized and denounced grave deficiencies in the country's justice system. They highlighted the difficulties LGBT people face in reporting crimes against them, the generalized lack of access to justice the population faces, and impunity in cases of violence against LGBT people.²⁶

In interviews with Human Rights First, activists Andrea Ayala—director of Salvadoran LGBT organization Espacio de Mujeres Lesbianas por la Diversidad (ESMULES)²⁷—and Karla Avelar both stated they know of only one case in which the perpetrator of a murder of an LGBT person faced justice. In that case the victim was a U.S. citizen and the involvement of the embassy moved the judicial process forward.

"It's a big problem," said William Hernández when asked about access to justice for LGBT people. The involvement of police forces in many cases of violence and discrimination against LGBT people breeds mistrust in the authorities, meaning many LGBT people do not report violations. The REDLACTRANS reports that many trans women are turned away or further victimized when seeking protection from the authorities.²⁸

Activists report that bias against the LGBT community is prevalent within the police and justice sector. A study from ESMULES highlights the homophobia within the National Civilian Police and the prevalent belief that LGBT people should not be afforded the same rights as other citizens. In the study, 66.8 percent of 413 police interviewed believed that domestic laws differentiate between the rights of an LGBTI person and other individuals.²⁹

Failure to Implement Penal Code Reforms

While the modified penal code went into effect in September 2015, activists report that the provisions on hate crimes have not been implemented in practice, despite many reported cases of bias-motivated violence since the code's enactment. According to Karla Avelar, the Office of the Attorney General does not have the resources—nor does the criminal system have the expertise and training—to appropriately investigate and prosecute hate crimes.

Attorney Bessy Rios, who advocated for the modified penal code, affirmed that many prosecutors and others in the justice sector are extremely homophobic and resistant to applying the law. She emphasized the need for sensitization and training of investigators and justice sector officials.³⁰

Asociación Entre Amigos has been working to sensitize prosecutors, police, and law enforcement staff who are charged with receiving reports of violations and crimes against LGBT people. William Hernández notes that police and prosecutors who document complaints do not ask victims about their

sexual orientation or gender identity and must be trained to work with LGBT populations. Asociación Entre Amigos has trained two hundred prosecutors and judicial personnel, but Hernández underscores that this is only a fraction of the total officers and officials who must be sensitized to working with LGBT people.

General Human Rights Context

Violence against the LGBT community occurs within a climate of many serious human rights issues. El Salvador has been recently described as the murder capital of the world, with a rate of 116 murders per one hundred thousand people in 2015.³¹ Drug trafficking disputes and criminal gang activity are behind the high rates of violence.³²

The 2015 U.S. Department of State Country Report on Human Rights Practices for El Salvador cites “unlawful killings and cruel treatment by security forces,” restrictions on basic freedoms, and human trafficking as some of the primary human rights issues in the country.³³ Human rights violations by members of the police are common; in 2015, 64 percent of violations reported to the Human Rights Ombudsman’s office were allegedly committed by members of the National Civilian Police (PNC).³⁴

Violence against women is also a major issue. In 2015, the country reported 324 femicides, a nearly 90 percent increase from the previous year.³⁵ Impunity is a major problem and the impunity rate for homicide is 95 percent.³⁶ The Department of State’s Country Report states that “an ineffective public security strategy, inadequate government funding and training of the PNC, and ineffective senior-level leadership made it difficult to identify, arrest, and prosecute perpetrators of human rights abuses and other crimes, thus diminishing public confidence in the justice system.”³⁷

U.S. Engagement in El Salvador

Salvadoran activists highlight the strong influence of the United States in El Salvador. The U.S. Department of State describes El Salvador as “a key

partner in efforts to reduce irregular migration and the threats posed by transnational criminal organizations and gangs.”³⁸ More than two million Salvadorans live in the United States.

For FY2016, the United States allotted a total of 750 million dollars for Honduras, El Salvador, and Guatemala—the Northern Triangle—as part of its Strategy for Engagement in Central America and in support of the Alliance for Prosperity, an action plan introduced in response to a surge of migration to the United States from the Northern Triangle.³⁹ The plan includes steps to stimulate economic growth, improve security and access to justice, and strengthen institutions in the three countries.⁴⁰

Fifty percent of U.S. funds for the Alliance for Prosperity may only be disbursed if the Secretary of State certifies that the governments of these countries are meeting certain conditions, including “protect[ing] human rights” as well as “combat[ing] corruption and strengthen[ing] public institutions.” Another 25 percent of the funds are conditioned on these countries’ work to stem the flow of migration to the United States.⁴¹ The president’s FY2017 budget request similarly included 750 million dollars for the Department of State and the U.S. Agency for International Development (USAID) to address the root causes of migration.⁴²

USAID Democracy and Governance funding in El Salvador “focuses on strengthening the justice system, anti-corruption reforms, enhanced civil society oversight, and public-private partnerships to prevent crime and violence.”⁴³ USAID also works to professionalize police and justice sector personnel in the country.

Combating Bias-Motivated Violence Against the LGBT Community

For the past three years the United States International Law Enforcement Academy (ILEA) in San Salvador has brought together law enforcement officials and personnel from throughout the Latin American and Caribbean region for a week-long hate crime training.

The course, led by experts at the Atlanta Police Department, covers the definition and prosecution of hate crimes and is LGBT-inclusive. The course also covers the proper and effective investigation of hate crimes.⁴⁴ Civil society organizations from El Salvador also participate on a panel on the last day of the conference, where training participants can dialogue and ask questions about their work and experience.

Recommendations for U.S. Government Action

Countering bias-motivated violence against LGBT people in El Salvador is in line with the United States' international obligations and commitment to advancing human rights. As the U.S. government works to stem the flow of migration at its southern border, it must holistically address the violence that forces many—including LGBT Salvadorans—to seek refuge in the United States. Thus, combating bias-motivated violence against marginalized populations, including LGBT people, should be a priority in U.S. policy toward El Salvador.

In 2009 the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (Shepard-Byrd Act) came into force. It “extends federal hate crime prohibitions to crimes committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person.” The law also allows for federal prosecution of hate crimes based on “the victim’s actual or perceived sexual orientation or gender identity.”⁴⁵ By the end of 2013 44 individuals were convicted in 16 states under the Shepard-Byrd Act.⁴⁶

U.S. efforts to combat bias-motivated violence in El Salvador should draw on the United States’ domestic expertise on combating hate crimes through the Shepard-Byrd Act. The United States should also support the efforts of civil society to collect data on and denounce bias-motivated violence against marginalized communities, including LGBT people. Such efforts would better the living conditions for LGBT people and other marginalized communities in El Salvador.

U.S. Department of State

Special Envoy for the Human Rights of LGBTI Persons

- **Convene a regional dialogue on hate crime laws. Such a dialogue should include officials at the Department of State and the Department of Justice and agency counterparts in foreign governments. It should also involve participation from the LGBTI Core Group at the Organization of American States and civil society organizations from the region. Discussions should include model hate crimes legislation and sensitization on bias-motivated violence for police and justice sector personnel in the region.**

U.S. Ambassador to El Salvador

- **Regularly meet with local civil society organizations working to advance the human rights of marginalized communities, including LGBT people, to reiterate the U.S. commitment to human rights and to combating violence and discrimination.**

Bureau of Educational and Cultural Affairs

- **Design an International Visitor’s Leadership Program (IVLP) under the theme of hate crimes and bias-motivated violence against marginalized populations, including LGBT people. Participants should include civil society organizations abroad working to track violence in their home countries as well as justice sector officials charged with investigating and prosecuting hate crimes. The IVLP should invite Department of Justice officials to meet with participants as well as other relevant stakeholders in the U.S. government and civil society.**

Bureau of International Narcotics and Law Enforcement Affairs (INL)

- Incorporate diversity and include sensitization to the human rights of marginalized populations, including LGBT people, in all bilateral trainings of the Salvadoran police force.

Global Equality Fund

- Support local organizations tracking bias-motivated violence against LGBT Salvadorans. Organizations in El Salvador note the need for resources to systematically track cases of violence and discrimination against LGBT people and the Global Equality Fund should strongly consider applications for funding to carry out such work.

International Law Enforcement Academy (ILEA)

The ILEA in San Salvador should strengthen its annual hate crime training by implementing a systematic follow-up program with participants and increasing participant connections with local civil society groups in their home countries.

- Discuss the hate crime training curriculum with expert civil society organizations and consult with them regarding possible additions to it. Civil society organizations in the United States, El Salvador, and elsewhere have conducted similar trainings with law enforcement personnel and could provide crucial insights on the curriculum.

- Work with U.S. embassies to conduct follow up with participants in the training, including fostering connections between training participants and civil society in their home countries. Follow up could include events at embassies in participating countries with exchanges between training participants, government officials, and civil society organizations working with marginalized populations.

U.S. Agency for International Development (USAID)

- Incorporate sensitization on issues concerning the LGBT community and training on the investigation of hate crimes against marginalized populations in all relevant trainings of Salvadoran law enforcement.
- Provide technical and financial support for civil society organizations tracking bias-motivated violence against LGBT people.

Congress

- Convene LGBT-inclusive hearings on hate crimes against marginalized groups around the world.
- Meet with Salvadoran LGBT activists traveling to Washington, D.C. to discuss the challenges in the country, learn about the current work of civil society, and discuss ways that Congress can further engage on these issues.

Endnotes

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