

Country		Organisation / Individual
1	Peru	Asociación PROSA

**Title:** *“Enforceability: an effective mechanism for the exercise of rights of People living with HIV in the peruvian judiciary system.”*

**Purpose of the report:** *To share evidence of the effectiveness of enforceability mechanisms for the exercise of the rights of people living with HIV in Peru.*

**Background and description of the case:** This report makes descriptive reference to a case of human rights violation. It describes the story of how a State Health Institute in Peru committed negligence in the case of 07 infants and 01 mother. The HIV virus came from contaminated units of blood in the center’s blood bank.

On August 15, 2004, Mrs. Carmen Guevara, a Peruvian citizen, gave birth to a boy with the initials C.C.G. at the Instituto Materno-Perinatal (Maternity Hospital) in Lima. Three months after the delivery, Ms. Guevara is notified by the authorities of that institution to go to that health center with her baby to get certain routine tests and exams because the child had undergone a blood transfusion at birth and that blood was apparently infected with HIV. On the same day, as she approached the health center, she found out that a large number of journalists from different media in Lima were waiting to record her and present her as first in various local TV programs.

Once inside the health service, a committee of officials and doctors explained to Ms. Guevara that her son was underweight at birth and had blood-clotting problems and, for that reason, they performed a transfusion of apparently HIV-infected blood. The medical team promises the lady that in the future the child will receive the center’s entire support for treatment and health monitoring if the positive HIV diagnosis was confirmed.

Outraged with this procedure, Ms. Guevara took advantage of the presence of the media and, at the beginning of 2005, decided denounce the facts through the media and, with the support of the Bar Association of Peru, who, in coordination with the NGO Asociación Pro Derechos [“Association Pro Rights”]-APRODE, formalized the criminal complaint for such a flagrant violation of mother and child’s rights.

In 2006, parallel to criminal proceedings, the NGO “PROSA” and Dr. Mario Rios, Aprode lawyer, supported a campaign of social surveillance and public advocacy to monitor the proceedings brought against the Peruvian State, which was accused of malpractice. Also that year, in parallel to criminal proceedings, a civil action is brought to request the Peruvian State compensation for the damage caused to the child.

During the years 2008 and 2009, the Peruvian judiciary accepts the plaintiff’s complaint and passes two sentences, both favorable to the mother and acknowledges the responsibility of the Peruvian State, which is forced to a civil reparation s/800,000.00 nuevos soles (approximately U.S. \$ 275,000). However, despite public recognition by the Minister of Health of the Peruvian State responsibility, the Ministry of Health’s attorney constantly appealed the rulings and used delaying tactics in order to avoid acknowledging the payment of civil

damages to those affected. Only in May 2010 was the payment of compensation made effective.

This was a landmark case as the State had to recognize through technical expertise this was a case of medical malpractice because the case of this child was a case of urgency, not of emergency medical care, which finally proved the negligence.

**Conclusions and recommendations:**

1. The Peruvian State's health system lacks of technical and legal mechanisms to ensure its customers' health. This situation translates into lack of compliance with treatment protocols, weak mechanisms in the management of supplies, etc. It is recommended to establish citizen oversight and monitoring systems to follow the compliance with existing regulations or to create legal frameworks that enable a reduction in the margin of error in comprehensive care processes for health service costumers in the State health centers.
2. There are agencies within the structure of State that do not respect the policies of the sector and contradict their mandates or policy decisions. It is recommended to establish control mechanisms that allow the Peruvian government transparency and effective compliance with the enforcement mechanisms available in similar cases.
3. Social control by the affected individuals or civil society is crucial for the enforceability of rules or mechanisms to defend the rights established by the Peruvian State. This is a clear example of how social surveillance activities and the use of existing enforcement mechanisms can achieve compliance with rules and policies to ensure respect for the rights of the people in a community.

<b>2</b>	<b>Mexico</b>	<b>Individual</b>
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My name is X. I am a medical doctor and Master in Public Health, working for the Ministry of Health of Mexico, in the area of Health Services; I am a Professor of Public Health and Epidemiology at various training institutions of health resources in the city of Puebla, and I also dedicate myself to research in the area of health care and public health.

In Mexico, Article 4 of the Constitution, published in the Official Gazette on February 3, 1983, reads "Everyone has the right to protection of their health..." which strictly means that the State has the obligation to provide the right-holder a series of provisions designed to satisfy an individual need that has, in fact, a collective impact.

The State becomes here the duty-bearer, which assumes the duty to adequately protect health through the establishment and operation of the means deemed necessary for that purpose.

Unfortunately, my country exhibits different conditions that, in my opinion, can be considered as part of a situation of inequality in the right to health of certain groups that have not been adequately covered by law or in design of health services.

Mexico has primarily privileged women's health. Therefore, there is extensive legislation and regulations on women's health. This led to the organization of health services with a women's perspective. While this situation has led to the observance of the millennium commitments as far as women and children's health is concerned, it has also created a state of inequality regarding the establishment and delivery of services for men, and further, lax and disorganized laws that lack an real gender perspective have led to greater inequality against male gays and adolescents.

Social development and healthcare programs promote accessibility and affordability for women, but there is little legislation and social policy aimed at men. For example, the social development program "Opportunities" is a governmental strategy to improve social development especially in education, health and nutrition. However, it has only generated a process of government paternalism toward society through electioneering activities that,

indeed, promote greater number of pregnancies and at younger ages and allowing less time between births. We also have laws against cervical cancer and breast cancer (aimed at women), but the law does not provide regulations for the prevention, control and treatment of prostatic hyperplasia or prostate cancer.

These are merely examples of how the State has fostered a state of inequality in health issues that is detrimental to men. Following this sequence, we can also note that health care services have a focus on women and, similarly, health workers have little or no health care experience for men. This is reflected in the scarcity of male adolescent-friendly health services and the lack a focus on sexual diversity. The result is can be seen in all health units, where there are few or no male users of family planning methods, increased teenage pregnancy, an increase in sexually transmitted diseases in adolescents and increased sexual transmission of HIV among adolescents and homosexual and heterosexual men.

For this reason, and driven by my desire to participate in the Latin American Regional Dialogue, I insist on the need to advocate for the development of health policy and the establishment of health services that are not only women-friendly but also and men- and adolescent-friendly, with a gender perspective, along with a perspective of sexual diversity, to promote the prevention of discrimination and HIV transmission by eliminating health inequality and fostering the openness of laws.

HIV law and practice in Mexico has been growing satisfactorily. Access to treatment and the reduction of stigma as part of the patient's psychological health care has achieved satisfactory results in general. However, the mere fact of having health services and servers without a gender diversity perspective and who are not very "friendly" toward certain groups (young and gay), makes access to health a social and psychological challenge for many patients. I believe that we need an international commitment that includes promoting health services that in practice are really friendly to these groups that have been, probably unconsciously, neglected by the system.

Therefore, promoting gender equity in health care, should not only be directed towards the empowerment of women, which is of course a very important issue that still needs further discussion, but should also include actions that are no less favorable to groups that, due to systemic issues, are deprived of timely, effective care and exposed to greater risks.

The challenge should be addressed from the political sphere, to modify the health system and implement laws that promote access to health.

**3 Argentina**

**Fundación Huésped**

### **On the Huésped Foundation's Advocacy Area**

Huésped Foundation is an Argentinean NGO, with local, national and regional projects, working since 1989 in response to HIV/AIDS, not only from the biological perspective, but primarily as a social issue. The Foundation's Advocacy Area, coordinated by Dr. Ignacio Maglio, provides free comprehensive legal assistance to people living with HIV/AIDS and their relatives who have suffered some form of discrimination, thus promoting the respect and defense of their rights. It also provides training in these subjects to various governmental agencies, including hospitals, health centers and educational institutions, as well as to civil society organizations and private companies.

Since 1989, one of the main activities in the Advocacy Area is the comprehensive legal service, which is the first free service in Argentina to offer comprehensive legal advice and assistance to PLWHA, relatives and close people, governmental and non-governmental organizations.

It provides advice on legal tools for filing complaint, for the identification of elements that allow making the stigma visible and for case monitoring, accompanying from initial requests for mediation between the parties to

the conflict, to the court, if necessary.

Also, over the years, we have provided training to groups of people affected, as well as various civil society organizations and companies for the promotion of opportunities to contribute to the enforcement and exercise of rights, from a perspective of international law on human rights.

The Foundation's Advocacy Area has been regarded as national and regional reference by the United Nations, through its joint program of UNAIDS (UNAIDS), in the report presented at the IV Summit of the Americas held in Mar del Plata in 2005. That document explicitly refers to the work of the Foundation during last biennium in the area of defense and promotion of human rights of people living with HIV/AIDS.

In turn, the Advocacy Area has sponsored the first for HIV/AIDS discrimination lawsuits in Argentina. In this regard, the first judicial precedents condemning discrimination in PLWHA, both in public agencies and private companies, were two of separate cases sponsored by the Foundation against the Federal Police of Argentina, in the former case, and against the publisher of one major newspaper in the country, in the latter case. ( C. Nac. Fed. Civ y Com, C.J c/Complejo Médico Policial Churrucá Visca s/Daños y Perjuicios. JA 1997. y C. Nac. Civ., sala 1ª, 3/4/1997, "T., P. v. ES. S.A.", JA 1998-I-326, respectively).

The Advocacy Area works and supports primarily PLWHS, and provides consulting and training services to public authorities, civil society organizations, health workers, educators, teachers, students, and others. It thus extends the scope of the human rights of PLWHA, developing the capacities of social organizations from different localities in Greater Buenos Aires, one of the most densely populated urban areas of the country, through training and transfer of tools that allow these organizations to address these issues and become benchmarks for these vulnerable groups at the community level, promoting spaces to report, enforce and ensure the realization of their rights.

To date, 3,145 people directly or indirectly affected by HIV/AIDS have received legal advice and 7,500 people of public areas, civil society and community organizations have been trained.

In 2008, a mutual cooperation agreement was signed between the Huesped Foundation and INADI (National Institute against Discrimination and Xenophobia), to design a complete map of the current state of discrimination against PLWHAs in Argentina.

Moreover, in 2010 the Huésped Foundation together with the Network of People Living with HIV in Mar del Plata have implemented a research on the to determine the Index of Stigma and Discrimination suffered by PLWHA in Argentina, a global initiative promoted by UNAIDS, IPPF, ICW and GNP+. Our goal is to have the analysis of results done by the end of May 2011 and present it to the Regional Dialogue, as part of the evidence for further work.

### **Intervention with vulnerable populations.**

The Huesped Foundation's Advocacy Area is strongly committed to reducing stigma and discrimination against vulnerable groups.

With regard to the promotion and protection of Human Rights in migrant and immigrant population, the Area actively participated in drafting the guides on "Prevention of HIV/AIDS in the migrant population" and "Human Rights and AIDS," prepared for community promoters who work in contact with these groups.

In addition, the team's lawyers have sponsored three important lawsuits related to discrimination in public health services to Peruvian citizens who were not receiving antiretroviral medication. In all three cases, legal intervention has yielded positive results by eliminating the requirement to provide documentation proving permanent residence in the country.

On another occasion, the legal department set an important precedent in a case involving the deportation of a

PLWHA, an Argentinean citizen, who was treated in a degrading and humiliating manner by the U.S. immigration authorities. A complaint filed in the Ministry of Justice and Human Rights and the Foreign Office allowed the obtaining a "waiver", an exceptional permit to travel to USA without any restrictions. We believe that this along with other precedents were substantial for the recent change in U.S. immigration policy.

The prison population deserves great interest due to its high degree of vulnerability to HIV/AIDS. The Huesped Foundation, through its legal department, was brought before the judiciary of the Province of Buenos Aires as "amicus curiae" in a case that investigates the conditions under which detained PLWHA receive comprehensive care.

In addition, a timely complaint made by the Advocacy Area in the Court of Criminal Appeal obtained a ruling by the highest criminal court, by which prison authorities were required the immediate improvement of care services for PLWHA in all prisons dependent of Prison Service of the province of Buenos Aires, which have the largest number of detainees in the country.

As regards the infringement of rights of special groups, the intervention of the Advocacy Area was decisive for the inclusion of PLWHA for liver transplant. In two scientific meetings held with the Argentine Society of Transplants and the Argentine AIDS Society, the participation of the service lawyers made it possible to eliminate the barriers that prevented PLWHA from registering on the waiting list for liver implants. The first case of registration of PLWHA on the waiting list for liver transplantation was made possible thanks to the advice provided by the Foundation's Advocacy Area to transplant specialist.

Recently, we have accompanied the public condemnation made by a person living with HIV affiliated with a health insurance company who had cancelled her membership. After the initial scandal, the company reviewed its attitude and reaccepted the person. This case allowed refreshing the parliamentary debate on the need to enact an appropriate regulatory framework to regulate the activity of prepaid medicine companies.

Also, area of advocacy has provided different recommendations to the legislature on policy initiatives related to HIV/AIDS issues. Specific advice was provided to the Legislature of the Government of the City of Buenos Aires on a local bill on HIV/AIDS.

Additionally, the area has a strong involvement in social media for the promotion of the fundamental rights of PLWHA.

4 Chile

***Movimiento de Integración y Liberación Homosexual (Movilh)***

## **LATIN AMERICAN DIALOGUE REPORT 2011: HUMAN AND LEGAL RIGHTS AND SEXUAL DIVERSITY IN CHILE**

### **Laws and practices that mitigate or support violence and discrimination.**

*Discrimination against lesbian, gay, bisexual and transgender people in Chile is one of the most serious and violent types of discrimination in the country, along with practical expressions of homophobia and transphobia in the legislation. This context hinders the prevention and eradication of HIV/AIDS and the provision of prejudice-free assistance to people living with the virus.*

*Together with the existence of discriminatory laws, the absence of an anti-discrimination law to prevent and punish abuses based on sexual orientation and gender identity is flagrant in Chile. In this regard, the Movement for Homosexual Integration and Liberation (MOVILH) has developed several initiatives that have had a direct impact on the quality of life of LGBT people, as described at the end of this report. But let's start with an overview of the country's context.*

### **Country overview:**

*Lesbians, gays, bisexuals and transsexuals in Chile have equal duties but not equal rights. This reality makes them second-class citizens, even though the country's Constitution guarantees that all of us are born free and equal.*

*Unlike other discriminated groups such as women, youth, indigenous people, people with disabilities, children, girls, the elderly, etc., who have specific services or ministries, sexual minorities lack any public policy or budget targeted to prevent and eliminate discrimination against them.*

*In the legislative field, Article 365 of the Penal Code establishes 18 as the age of sexual consent for homosexuals, while 14 for heterosexuals. This has a negative effect on the quality of life of LGBT youth, since the State considers their love for someone of the same sex a crime.*

*Also, Article 373 of the Penal Code, which punishes behaviors against good habits and morals, is used by some police officers to assault and arbitrarily detain homosexual couples or transgender people by the mere fact of expressing affection in public and/or having a different aesthetic. Homosexuals can be demoted, isolated and eventually dismissed, as the employer can take advantage of Article 161 of the Labor Code, which allows businesses to dismiss employees for "business necessities"*

*Equally regrettable is the fact that Chile lacks a law against discrimination and many of the abuses against sexual diversity go unpunished when they are brought to court. Further, there is no civil union regulation to allow same-sex couples leaving their goods to their actual couple or having health or life insurances, in case the death of some of the parties. Meanwhile, the absence of a gender identity law prevents the transgender population to be identified with the name and sex they are and feel, with all the problems and difficulties this entails in any administrative process and attempts for social, education and employment inclusion.*

*In parallel, allegations of discrimination against sexual minorities have been increasing in recent years: 124% in 2009 compared to 2008, 11% in 2010.*

*According to the Annual Reports on Sexual Diversity in Chile developed by MOVILH, 513 complaints of abuse against LGBT population have been reported between 2002 and 2010. These abuses range from physical and verbal abuse to murder, through discrimination at school, at work and within families, among others. In all these cases, the only support received by the victims is the support of the sexual diversity movement, sometimes in partnership with other human rights groups and/or opinion leaders, including a number of parliamentarians from different sectors.*

*Experience in policy advocacy and assistance to victims of discrimination*

*In terms of legislative advocacy, MOVILH has developed the following actions:*

*1.- Development of different bills to repeal discriminatory laws and suggest alternatives for legal equality.*

*Since 2003, the organization has developed four bills: two on same-sex civil unions, one to revoke section 365 of the Penal Code and another one to remove Article 373 of the Penal Code.*

*All these projects have been processed in parliament with the backing of left- and right-wing and center MPs and Senators. In all cases, studies were conducted on the effects caused by the absence of rules against discrimination and the enforcement of exclusive laws, as applicable. Communication campaigns were also conducted to raise awareness on the subject.*

*Similarly, MOVILH participated in the drafting of the two bills on same-sex marriage that already in the Parliament for consideration, as well as the development of a proposed gender identity law that would allow transsexuals to change their name and legal sex according to their reality.*

*Although none of these laws has been passed, campaigns and bills have boosted permanent public and social debate on sexual diversity in Chile, which has translated, among other things, into a decrease of discrimination among citizens, which has enabled the LGBT population to increasingly denounce the abuses they suffer, with far less fear than in the early 90's.*

## *2.- Adoption of anti-discrimination ordinances.*

*A bill which provides for measures against discrimination is pending in Congress since 2005. After several campaigns and meetings with authorities conducted by MOVILH, that regulation includes sexual orientation and gender as protected categories.*

*Given the delay of the bill, MOVILH developed in 2008 the so-called "Municipal Anti-Discrimination Ordinance", in order to bring the debate to the local arena. In 2008 we carried out a campaign that managed to commit various local authorities (mayors and councilors) to the Ordinance. When those who supported the ordinance as candidates are elected, we meet them to encourage the fulfillment of their promise. After intensive discussions since 2009, four municipalities in northern, central and southern Chile have already adopted the Ordinance: Santiago, Puerto Montt, Chillán and La Serena.*

## *3.- Support to discrimination complaints.*

*Since 2002, MOVILH prepares an Annual Report on Human Rights of Sexual Diversity in Chile, gathering all the complaints and cases of discrimination based on sexual diversity.*

*This report, the only one of its kind in the country, has been regarded as a central source for studies by other agents to have an overview of sexual diversity in Chile, including the Global Survey on Human Rights developed by the Department of State of the United States.*

*In parallel, the organization I represent has provided legal, psychological and/or human assistance to more than 90% of the complaints and cases of discrimination reported in Chile from 2002 to date.*

*The above, together with all the work done to eradicate homophobia and transphobia in Chile since 1991, has led the work of MOVILH to be reported on several occasions by the United Nations Program for Development (UNDP), the Ministry General Secretariat of Government, and the UN High Commissioner of Human Rights.*

*In this regard, we believe that the experience gathered by MOVILH over the years and its achievements to eradicate discrimination based on sexual orientation and gender identity, may be useful for HIV/AIDS prevention strategies and to eradicate related exclusions and the negative impact of homophobia and transphobia.*

5

Dominican Republic

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### **COTRAVETD and the Trans population in the Dominican Republic.**

The Committee of Transgender and Transvestite Sex Workers (COTRAVETD) is the first group consisting of trans people in the Dominican Republic. This group arose from the need to respond to the various problems facing trans sex workers, whose lives are marked by transphobia, stigma and discrimination, in a climate of violence and abuse.

From its inception COTRAVETD was supported, structured and strengthened by the United Women's Movement (MODEMU), an organization aimed at fostering respect for the rights of female sex workers. As both populations were suffering similar amounts of hate and discrimination, we have joined forces to raise our voices and find

strategies to curb police abuses, lack of legal protection, hate crimes, and vulnerability to HIV and other STIs responsible for the highest prevalence among different population groups in the country.

This process has led to the empowerment of the trans population, who has begun to demand more decisively their say in discussion and decision-making spaces and to courageously face the systematic abuse of the military forces who imprison, beat, sexually harass and vex transgender people be they sex workers or not. There is still a long way to go because hate crimes, expulsion from school based on identity, exclusion from employment and health system, among many others, are still common in our country. All the above bears with impunity on innocent people. We are victims of a lack of legal protection that has no justification other than prejudice and ignorance. There is no justification for such social disdain.

Dominican trans population is among the lowest population segments in terms of education largely as a result of the constant harassment trans undergo at school, which leads to high dropout rates, very poor job options and the deterioration of living conditions.

Currently, while the judicial sector and relevant bodies turn a deaf ear to us, our population is being the victim of all these attacks.

For this reason, COTRAVETD has tried to place its voice in different circles of decision-makers, hoping to find allies for the cause and helping hands brave enough to join us in confronting the cruel prejudice we are undergoing. COTRAVETD is today part of the LacTrans Network and member of the CVC, and it intends to continue its active and proactive participation in these spaces in an attempt to improve the climate of contempt in which thousands of trans people in the Dominican Republic live.

**6**      **Venezuela**

**ASOCIACIÓN POR LA VIDA**

The Association for Life (ASOV) is a non-governmental and non-profit organization made up of people living with HIV, committed to HIV/AIDS Prevention and Education, and to the Defense of Human Rights of People with HIV in the state of Merida, Venezuela. ASOV began operations on 24 September 1999, as a committee for access to science and technology in antiretroviral treatment for people living with HIV or AIDS in the state of Merida.

Legally, it is registered as an association in 2000, before the Subordinate Public Record Office of the Libertador District, Merida State, being notarized under N° 16, page 4, first quarter of 2000.

Regarding the progress in achieving universal access to prevention, care, support and treatment in the Bolivarian Republic of Venezuela, and more specifically in our state, progress and setbacks have occurred in the country in recent years.

According to the UNGASS Country Report 2010, it is estimated that the epidemic in Venezuela is concentrated, with low prevalence in the general population (less than 1%) and over 5% in more vulnerable populations, especially among Men who have sex with men (MSM).<sup>1</sup>

In our opinion the national situation regarding HIV/AIDS can be outlined as follows:

1 .- In Venezuela there are approximately 110,000 people living with HIV and this number is increasing. It is projected that by 2015 there will be approximately 172,000 people living with HIV in the country.

2 .- While in 1990, the infection was far more usual in men than in women, with a ratio of 17:1, this ratio was 4:1 in 2004.

3.- Venezuela is the sixth country in Latin America and the first in the Andean region in number of people living with HIV.

4.- 80% of the total budget for HIV/AIDS in Venezuela goes to the provision of antiretrovirals for people living with HIV, while only 10% goes to prevention.

5.- According to the report Measuring Expenditure on HIV and AIDS conducted in 2001, the investment of the Venezuelan government for HIV/AIDS is more than 90% of the total budget allocated to this matter in the country. Therefore, there is no dependence on foreign aid.

5.- In terms of public policy and HIV, Venezuela has resolutions, regulations, rulings and even a law (in the state of Merida) on HIV/AIDS, including: 1.- Organic Regulation of the Ministry of Health and Welfare, Official Gazette No. 3561, December 27, 1994. 2.- Ministerial Resolution No. SG 0104-99. 3.- Resolution No. SG-439 of the Minister of Health and Welfare, August 26, 1994 (Official Gazette No. 35,538 of the Year CXXI, Month XI, September 2, 1994). 4.- Resolution No. 1 of the Ministry of Health and Welfare, 23 March 1987. 5.- Resolution No. 292 of the Ministry of Health and Social Development, published August 7, 2000. 6.- Official Regulations on Sexual and Reproductive Health Care, June 3, 2003. 7.- Law on Protection against sexually transmitted diseases, November 04, 1941. 8.- Official Regulations of the National Health System on Sexual and Reproductive Health Care in public and private establishments, of 03 June 2003 (Official Gazette No.37,705 Year CXXX- Month VIII, June 5, 2003.). 9.- Technical regulations on biosafety procedures for the prevention of human immunodeficiency virus (HIV), hepatitis B/C and behavior of health workers in case of exposure to blood and (or) body fluids in Venezuela. Official Gazette of the Republic of Venezuela No. 31,356, Tuesday, November 8, 1977. 10.- HIV and AIDS education, prevention, care and rehabilitation Act of the state of Merida, from 07 October 2003. 11.- Review of the Legal Adviser of the Ministry of Education, Culture and Sports (now Ministry of Popular Power for Education), No. 000561, June 26, 2003. 12.- Resolution No. 292 of the Ministry of Health and Social Development. Published in Official Gazette of the Bolivarian Republic of Venezuela No. 37009, August 7, 2000. 13.- Guidelines for the Prevention, Management and Control of Infection by Human Immunodeficiency Virus (HIV) which causes the acquired immunodeficiency syndrome (AIDS) in Military and Civil Staff. Official Gazette No. 38597, January 4, 2007. 14.- Warrant of constitutional protection of the Administrative Chamber of the former Supreme Court which sets out the constitutional obligations of the then Ministry of Health and Social Welfare, regarding people living with HIV and AIDS who need medical and pharmacological care, 15 July 1999.

In this regard, we have documented and outlined a series of violations of the human rights of people living with HIV, which are established practice in Venezuela, namely:

### **Human rights to life and health**

Venezuela has health centers for people living with HIV in most states. However, the reality is that despite the efforts to improve comprehensive health care, there are not sufficient medical specialists (infectious disease, immunologists) staffed with expertise in HIV. This threatens the quality of care and therefore the life of users. However, the Country Report concludes, in contrast to what we found, that: "In some centers in the country specialized consultations for patients living with HIV were not available, and patients had to travel to neighboring entities; the same happened virologic and immunologic testing and treatment dispensation. All these problems have been largely overcome, as each state has already at least one specialized unit, treatments are distributed in all coordination units and, if a state does not have its own a specialized laboratory the sample is taken and sent to another laboratory" (p. 111). Since 1999, after legal action prompted by the community sector in HIV/AIDS in the country (NGO's), the former Supreme Court by decision of the Political-Administrative Chamber on 15/07/199, with presentation of Judge Hidelgard Rondón de Sansó, ordered the Venezuelan State to provide free antiretroviral therapy, medication for opportunistic diseases, as well as specialized examinations to all people living with HIV in the country. Since then, our country has a policy of access to treatment coordinated by the

National HIV/AIDS Programme, which currently benefits more than 37,800 people living with HIV.<sup>2</sup>

This constitutional mandate has been fulfilled only partially, as in 2010 and so far in 2011, 7 events of shortages in the acquisition of antiretroviral therapy have been reported, which undoubtedly affects the human right to health of people living with HIV in the country. Similarly, no reagents are purchased for Elisa tests, medications for opportunistic infections.

Further, the Ministry of Popular Power for Health has given little attention to the strengthening of prevention in general, and we are, in particular, concerned about the prevention of HIV/AIDS. The Community sector offers effective response, and until 2009 joint and continuous work was done with the Ministry of Health through its contributions for the implementation of projects by organizations. However, since 2009, after constant change of authorities it was decided not to continue such funding. Besides, there is evidence of shortages in the purchase of male and female condoms, which certainly hampers prevention efforts.

### **Right to Nondiscrimination**

The Bolivarian Republic of Venezuela has extensive legislation in this specified area, in the form of resolutions, rulings and even a special regional law on HIV/AIDS, all framed in the Constitution of the Republic, which is driven by the best public interest. However, there are still discrimination events against people living with HIV, driven by the illegal application of HIV antibody testing to enter or continue in the labor market and even to access educational and health services.

Such situations, which encourage discrimination, have been and continue to be reported to courts (Office of the Ombudsman, INPSASEL) without further disciplinary action.

### **The human right to work**

In general, access to the labor market remains difficult due to job scarcity. For a person with HIV this becomes doubly difficult due to the hidden practice of private companies and public institutions that perform screening test for HIV antibodies, limiting the entry of this population group to the labor market. One example is represented by the security agencies (Regional, Local Police, National Guard), which apply the test and exclude HIV positive Venezuelan citizens from their ranks.

1 Salas, H. and Campos, J. Estimation and Projection of HIV / AIDS in Venezuela. 2005.

2 According to statements by the Minister of Popular Power for Health Dr. Eugenia Sader Coronela outlined in an article entitled "MOH guarantees delivery of drugs for HIV", Diario El Universal, published on February 9, 2011.

7	Honduras	<b>APUVIMEH/Asociación Para Una Vida Mejor de Personas Infeccionadas/Afectadas Por el VIH-Sida en Honduras [Association for a better life for people living with /affected by HIV/AIDS in Honduras]</b>
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### **HONDURAS NATIONAL CONTEXT**

The coup of 2009 and the concurrent crisis, together with the effects of the international financial crisis and other factors such as the increase in international oil and food prices, generated a strong impact in worsening the conditions of poverty of the population. According to the INE (19), poverty in the country, measured at the household level, increased from 58.8% in 2009 to 60% in 2010. During the same period, extreme poverty rose from 36.4% to 39.1%. This means that about 47,000 households who used to be able to afford the cost of the basket with their income, weren't able to do so by in May 2010, becoming part of the poor. This is equivalent to

approximately 216,000 people. In turn, 61,000 new households fell into the extreme poverty category, which involves an estimated population of 284,000 people.

Poverty figures show that extreme poverty -the category where most progress had been made-, has regressed to levels seen five years ago. That is, the progress made since 2006, which reduced the number of poor households from 672.159 to 598.328 (approximately 75 000 households) in 2008, has been neutralized by the progressive increase of poverty in the last two years.

INE data for the labor market confirms the impoverishment of the population. In May 2009, the monthly income of the poorest people of the country was 390 lempiras, by 2010 that income fell to 380 lempiras per month. In total, those facing employment problems were 1.3 million in May 2009 and 1.4 million a year later. These 100.000 Hondurans work in not-permanent jobs or earn less than minimum wage.

Hate crimes based on sexual orientation and/or gender identity, often go unnoticed and are generally recorded as crimes of passion by the investigating authorities. Most of these crimes go unpunished and reliable sources to demonstrate the seriousness of the problem are limited because the crimes that are particularly harmful to LGBT people are not made visible.

According to reports from LGBT organizations in Honduras, there are four main patterns of hate crimes perpetrated against sexual diversity being some of them committed by police, who constantly harass LGBT people often with beatings, abuse, illegal detentions and physical abuse simply because of their sexual orientation, due to the contradiction that, according to the police law and social life, "temporary detention" (imprisonment up to 24 hours) can be justified for violating the decency and good manners, making sexual diversity in particular highly vulnerable.

Another pattern concerns attacks perpetrated by clients of commercial sex workers (CSWs). Motivated by psychological conflicts between their homophobia or transphobia and the sexual attraction to persons of the same sex or transgender people, they commit violence against sex workers especially among the trans population. In general, these violent aggressions have sexual component that may include rape, forced sex, sexual torture and other acts that infringe upon their integrity as human beings.

The third pattern referred by the report is family violence, including attacks on children, nephews, step-sons or daughters, cousins, when they learn that they are lesbian, gay, transgender or bisexual. This violence results in physical attacks, discrimination, stigma...

Social cleansing is the fourth hate crime pattern. It is committed by neighbors or strangers whose primary aim is eliminating gay and transgender people from the neighborhood or community. Social cleansing appears to be the main source of the murders of LGBT people. These deaths have no apparent reason and they seem to be committed in situations of theft, gangs or drug trafficking. However, we affirm that many of the killings and abuses to sexual diversity are the product of situations of hatred and persecution. We can still hear phrases such as "BENT, CURSE, WE ARE GOING TO FINISH WITH YOU ALL" and other homophobic and transphobic slurs.

The situation that arose after the coup evidenced high levels of impunity for the actions committed against the people who raised their voice against the abuses that resulted from the violation of the rule of law. The death toll of hatred killings totals 37 approximately. According to a report by UNAIDS in Geneva, there is concern about recent cases of murders of transgender persons recorded in Honduras.

Hate crimes based on sexual orientation and/or gender identity, often go unmarked among the general population and are generally recorded as crimes of passion by the authorities, leaving most cases unpunished, adding a high level of vulnerability and helplessness for those who claim the human rights regarding sexual diversity.

Over the past two years (2009-2011), our organization has been involved in delicate situations of insecurity for

our work on Human Rights of the PLWHA and LGBTI community in Honduras, to the extent that 2 members of our organization were killed including the Secretary General, Walter Orlando Trochez (13 dic.2009) who was a young HIV positive, Defender of Human Rights and part of the Gay Youth. We are the victims of surveillance, siege, persecution and death threats and kidnappings of young people of our organization. In general, it is evident that there is no political will in the country to lower the rates of hate crimes based on sexual orientation, and that the activities of Human Rights defenders entail greater risk.

### **Additional data on the Alert sent by the Organization of Human Rights Defenders**

#### **Frontline Defenders**

APUVIMEH works with the lesbian, gay, bisexual, transgender and intersex community and PLWHS in Honduras. It also runs a shelter for people living with HIV/AIDS and the LGBT community, "Casa Renacer," and several projects including a program on HIV/AIDS and STD prevention, and a gay youth project.

In recent months, APUVIMEH members and staff began to being spied, suffer threats, kidnappings and intimidation. On August 14, 2010, an APUVIMEH official working on a project to prevent HIV/AIDS (the name is protected by Front Line for security reasons) was kidnapped outside the office of APUVIMEH. It was reported that the perpetrators, who were not identified, forcibly introduced an unknown type of pill in his mouth using a handkerchief. It is believed that the pill in question was a sleeping pill, because the officer said he lost consciousness and cannot remember what happened next. Some 19 hours later, the man was found abandoned about 30 kilometers from the capital city of San Juancito. He had been stolen his belongings, including his university identification card, credit cards, mobile phone, books and laptop. While the victim was seriously traumatized by the attack, the family decided not to report the kidnapping to the authorities because they fear reprisals.

The week of Aug. 9, just days before the kidnapping, the residence of Mrs. Sandra Zambrano, project manager of APUVIMEH, was being watched by armed men. Strangers were parked outside the house for half an hour and questioned neighbors and passersby about Mrs. Zambrano and her family. On August 13, around 9:00 pm, it was noted that the APUVIMEH office was watched by a stranger. On August 20, APUVIMEH made a complaint to the Human Rights Unit of the Ministry of Security requesting protection.

It was agreed that the police would send a patrol to Sandra Zambrano's home and another one to the offices. However, although the police drove their patrols as planned on 23 August, they never came back and Sandra Zambrano was not even contacted.

There are other APUVIMEH reports on several other incidents of threats and harassment. Since December 2009, five members left the country for security reasons due to death threats, surveillance, intimidation, having their identities publicly revealed, and espionage in the offices. As a result of intimidation and spying, APUVIMEH decided to close the office of his gay youth project on September 2<sup>nd</sup>. Previously, Front Line had emitted an urgent call on the brutal murder of Mr. Walter Trochez, APUVIMEH member who died December 17, 2009.

Front Line is gravely concerned about the above incidents and understands that such acts are part of a systematic campaign of intimidation of the members of the LGBT community in Honduras, particularly defenders of LGBTI rights. Front Line is particularly concerned about the safety of Sandra Zambrano and other APUVIMEH members and understands that such spying, threats and intimidation directed against them are directly related to their work as human rights defenders. The campaign has become increasingly violent: at least 30 members of the LGBT community have been killed so far in 2010, and there are several documented cases of LGBTI people who left the country for security reasons.

I was thrown out of home at the age of 11 because my parents were ashamed of me for being too effeminate. Since then, I learned to survive on the streets selling my body. At that time we were about 300 children in commercial sexual exploitation and I had no knowledge of HIV or AIDS. Only I heard my friends, who were more beautiful than women, saying that every time they had sex with a man, these would tell: "Welcome to the world of AIDS!" or "bingo, you won the lottery!"

Time went by and 3-month-old kid that was sick was abandoned in my home. I faced a long, overwhelming and painful process because of her disease and then I faced a whole country that could not accept that a trans person could give love and tenderness to a baby. I clung to life and many people full of myths and prejudices could not stand the idea that I would not let him die because they had the idea that a family means mom and dad and nothing more.

I faced the competent authorities to obtain adoption papers for the child and after a very difficult process I got them.

After all I went through in my life, I decided to create a foundation bearing the name of my son who will be 18 this year. The goal of the foundation is helping parents and preventing children be thrown out of their homes, and rescuing all those that are already in the streets, as nothing has changed compared with the situation 30 years ago.

Of the 300 minors I mentioned above, only 5 did not contract HIV or AIDS. The rest are dead or terminal. What is worrying is that all these men who have sex with these minors are mostly men who share their lives or live with a woman, because they are married.

Costa Rica has very severe laws against commercial sexual exploitation and pedophilia. The problem is that most of these children are of a different sexual orientation and are not supported by the Costa Rican state, despite the existence of a resolution of the Constitutional Tribunal by the appeal for legal protection number 08-007788-0007 promoted by the Foundation Michael Vasquez against the Executive Chairman of the National Agency for Children, Mario Víquez Jiménez, where he is ordered by vote # 2008-15751 to ensure the necessary action is taken within 18 months in coordination with the Ministry of Health [sentence incomplete in the original]

From this ruling, the institution has two national shelters or centers specializing in the rehabilitation of sexually abused children or in commercial sexual exploitation and protection programs for physical and psychological treatment and specialized rehabilitation, as well as the implementation of alternatives measures for the prevention and protection on an equal footing for boys and girls at social risk.

Since its inception, the foundation has been dedicated to alerting the authorities about the problem of AIDS as we know how, from whom and where new infections come. Together with the Pan American Health Organization, we have created a video to contribute to a national response to the pandemic and prevent further spreading in the general population.

For this reason, we are currently constructing a specialized center, it is the only way to stop the spread of this pandemic. We strongly believe in providing a response to these minors' situation, giving them the opportunity to resume their education and to go back home or with relatives. Institutionalization is not the best way because most of the minors who have gone through these shelters, are again dressed like woman selling their bodies again when they reach 18. This is because there isn't staff that is professionalized in the area of sexual diversity.

We are currently rolling out an awareness, education and prevention campaign and seeking support from international agencies to support our prevention initiative, since here we have only remedial programs. We also want to inform this honorable committee of our web site so they can see the educational video and our

information:

Website: [www.fundacionmichaelvasquez.org](http://www.fundacionmichaelvasquez.org)

Facebook: [Michael Vasquez Foundation](#)

I take leave most respectfully, and hope our work is of much use for this committee and they can take the necessary measures to build an effective response to AIDS.

See you in Brazil!

**9 Costa Rica**

**BITRANSNG Association**

May 3, 2011.

BITRANSNG Association of Costa Rica (Bisexuals, transgender, and gay) is perhaps the only organization in the country to work with different populations at risk, with no budget for more than fifteen years, in HIV/AIDS issues and the Defense of the Human Rights of these people.

Mr. Carlos Alfaro Villegas, current president and former commercial sex worker, in conjunction with some other members have demonstrated over the years that working for the rights of those populations is possible, despite having no support from the state or, seldom from international organizations.

The association has over 800 members, some of them living with HIV/AIDS and some others not but some STDs.

Beneficiary groups over the years:

1 - Prison Population. They have been given preventive and educational workshops; legal support to trans infected with HIV/AIDS, so they can leave the prison system. Were also carried out continuous visits to provide condoms, and some educational materials. (We do not have any state financial aid)

2 - Transvestites and transsexuals. A program called "Face to Face with yourself" is being carried out to provide legal support and prevention in the workplace (street) for commercial sex workers in these groups. Some of these people are living with HIV and AIDS. (No budget at all for this project)

3 - Institutions of the State with which our Association is trying to coordinate actions in support of these populations.

1 - Social Security Fund.

2- Ministry of Public Security.

3 - Office of the Ombudsman.

4 - International Organizations with which our Association is to coordinate actions in support of these populations.

1 - UNAIDS.

2 - USAID.

Dear Sir or Madam,

The following complaint is perhaps the most important of all the ones presented by our association before different governmental authorities. It is the appeal for legal protection filed more than two years ago against dr. Maria Luisa Avila, Minister of Health, to request the creation of education and prevention materials for people living with HIV/AIDS, according to the general law of hiv 7771, whose provisions, that read "create education and prevention materials for those population", she had kept hidden.

To such recommendations have not been followed, although we have taken these allegations to different bodies such as the Ombudsman's Office, CONASIDA, the Costa Rican Social Security, UNAIDS, but we get no answer. In April last year, we met with the Minister of Health, where we showed our concern because more than two million condoms were expiring by April 2010, but no action was taken. The did not get any answer neither from CONCASIDA 2010, San José, Costa Rica.

Dear Sir or Madam, up to date, our organization works in coordination with the Costa Rican Social Security, which provides 500 to 1000 condoms per month to these people, who are more than 800 people, and some of them are HIV positive, both within the prison system and out.

It is concerning to see how these people are discriminated by some state institutions; some of these people cannot receive health care because they don't have the right documents; in other cases, because they are undocumented immigrants. Our organization has managed to get the national insurance for some trans people living with HIV/AIDS.

Our organization has recently won a lawsuit against the Minister of Public Safety, regarding co-living areas, such as the Bible Clinic, Mopt. National park, Morazan (sex trade areas). The clear violations of human rights against these populations have been very violent and they were prevented from working in those areas. However, the Ombudsman's Office has ruled in their favor and has requested the Minister and other staff not to violate the rights of these people and, on the contrary, maintain the area quiet and protected. (this action was done without any budget, as well as the other actions taken by our association).

Sir or Madam, our organization requires urgently the supportive solidarity of our brothers and sisters in Latin America, to have the best advice for the best work with and interest of these people who are seriously suffering from discrimination and violence, including children and adolescents, an to provide the best defense in their legal processes.

Looking forward to hearing from your recommendations on this case.

10 Colombia

Individual

#### LEGAL ACTIONS AS A TOOL FOR PATENT BREAKING AND ACCESS TO LOW-COST DRUGS

The World Trade Organization has ruled the exceptions to the application of patents in some cases.

Some pharmaceutical research companies have patented drugs in Latin America to raise prices and have become a monopoly. At the same time, they prevent generic drugs from entering and compete in the market, which would lead to lower prices and thus possibility for more people to access them.

One of the mechanisms created by the World Trade Organization to disable patents is called compulsory licensing. By this means, the country can order that a given drug is of public interest allowing the entry of generic drugs and with payment of a reasonable compensation to the patent holder.

Historically, the decision to use this strategy has been made by States (Brazil, Thailand, Ecuador), whether by governmental or political will.

There is a legal concept used in legislation around the world called group shares or class shares through which civil society can go to court to obtain a ruling forcing the State to use the exception stated by the World Trade Organization.

### **THE COLOMBIAN CASE**

In Colombia, several people from the civil society asked the entity in charge of managing patents, the Super-Intendency of Industry and Commerce, to use the exception. This entity asked its opinion to the Ministry of Social Protection who, after considerable study, determined that in the country did not had problems to access Kaletra, produced by Abbott Laboratories. Therefore the Super-Intendency refused the request.

Once exhausted the governmental procedure, the undersigned as proxy as well as activist plaintiff, along with the Colombian Network of People Living with HIV and AIDS –RECOLVIH- and other organizations, filed a class action which is pending in the Administrative Court 37 of Bogota.

Currently and as a result of the pressure and debate we have transmitted through the media, the Ministry of Social Protection made an agreement with Abbott Laboratories to reduce the price from US \$3,000 to \$1,000 per person annually.

Since we consider that the price can go much lower with generic pharmaceutical companies (about US\$320 person per year), we continue with the legal action to which we hope having a sentence this year.

**11 Argentina**

**Intercambios Asociación Civil**

### **Advocacy to amend the legislation on Drugs**

The Civil Association *Intercambios* is a non-governmental organization created in Buenos Aires in 1995 whose mission is to study and call attention to problems related to drug use. It was founded by a working team, consisting of a group of professionals with wide-ranging interests in the field of drug-related problems and HIV/AIDS. It is a founding member of the Latin American Harm Reduction Network (Red Latinoamericana de Reducción de Daños) and the Argentine Harm Reduction Network (Red Argentina de Reducción de Daños). It is also a member of the International Drug Policy Consortium (IDPC) and, since April 2009, part of its Steering Group to represent Latin America. It is also part of the Vienna NGO Committee on Drugs (VNGOC) and the Permanent Council of the Organization of American States (OAS). At its meeting on December 3, 2009, the request to be part of civil society organizations registered in the OAS was approved. Its legal status is granted by the General Inspectorate of Justice by Resolution No. 000878 of 13 September 1996.

The institution's mission is to support, within a human rights framework, the construction and application of knowledge related to drug problems.

We understand *drug-related problems* as the diverse aspects related with the demand and sale, political control (social and penal), and their social, cultural and personal repercussions. *Intercambios* also tackles the problems related to HIV/AIDS, both in relation to drug use and in other, more general aspects.

*Intercambios* recognizes that the stigmatization and discrimination associated with these social problems often translates into practices that violate basic human rights. For these reasons, *Intercambios* dedicates its action to the ethical defense of Human Rights with a commitment to rigorous social science practice.

Since its inception, and consistent with the institutional goals, *Intercambios* has conducted research, prevention, training, advice and advocacy in cooperation with other national and international governmental and nongovernmental organizations, universities and companies.

The projects developed by the institution include:

- ***Prevention of HIV infection in injecting drug users in the Southern Cone***

This project was initiated by UNAIDS Southern Cone, the national AIDS programs in Argentina, Chile, Paraguay and Uruguay, and one NGOs from each country: *Intercambios* (Argentina), CORPORACIÓN CALETA SUR (Chile), PREVER (Paraguay) and IDES (Uruguay). As background to this project, a study on injecting drug users was conducted, resulting in the beginning of the first needle exchange program in Argentina, in June 1999. Three phases of the project were developed between 2000 and 2006. One objective was to build a common approach in the Southern Cone in order to address HIV/AIDS among injecting drug users. The last two phases were supported by the United Nations Office on Drugs and Crime (UNODC).

- ***Adding actors to reform drug policy***

With the support of the *Fund for Reform of Drug Policy of the Tides Foundation in New York*, this project lasted from 2002 to 2003.

It was designed to systematize institutional efforts to continue and expand the prospect of harm reduction in Argentina through advocacy efforts to contribute to the movement for reform of drug policy, presenting alternatives to current criminalizing and abstentionist policies.

- ***Research on drug use, policies and services in Argentina***

With the support of the Research Coordinator Center of the International Federation of Catholic Universities (Paris, France), several research projects were conducted since 1999, which also allowed to work with research teams from different countries in Latin America and Asia.

- ***Uruguay Profiles and trends of risk behaviors for HIV / AIDS and Hepatitis B and C among drug users (DU) in the context of current government policy: analysis from Latin American countries – Brazil, Argentina and Uruguay***

The project was the result of integrated action research at the Federal University of Minas Gerais and Oswaldo Cruz Foundation (Brazil), *Intercambios* Civil Association and the Faculty of Medicine of the University of Buenos Aires (Argentina) and the Institute for Research and Development Social (Uruguay). Financed by the Ministry of Science and Technology, National Council for Scientific and Technological Development of Brazil, the project took place from 2006 to 2010.

- ***Impact of drug control measures in the prevention and treatment of HIV in drug users in Latin America and the Caribbean***

Financed by the Foundation Open Society Institute, different advocacy initiatives are developed in Latin America since 2008 aimed at contributing to consolidate alternative drug policies. These initiatives included the collection of information to evaluate the consequences for health and human rights in relation to injecting drug use and HIV infection in the region, of the resolutions adopted by the Special Session of the Assembly on Drugs United Nations General 1998.

▪ ***Drug policy and prison overcrowding in Argentina***

Financed by the Transnational Institute (TNI), this project took place between October 2009 and August 2010. In 2010, we conducted a study on drug policy in relation to prison overcrowding in Argentina, as part of a comparative study of the criminal law of drug control, its application in everyday reality, and its impact on prison systems, coordinated by the Transnational Institute (TNI) and the Washington Office on Latin America.

Control policies expressed drugs tensions, contradictions and conflicts over how to regulate their production and consumption. In this framework there are local and international discussions on the subject.

Drug control policies are subject to tensions, contradictions and conflicts regarding the way drug production and use should be controlled. It is in this context that local and international debates have developed.

In Latin America, social inequalities and high disparity between rich and poor, these debates cannot ignore the consequences of drug control policies in the region: social isolation, disproportionate numbers of drug users and 'mules' incarcerated, social violence, environmental damage and violations of basic human rights.

According to research conducted by Intercambios in partnership with the University of Buenos Aires, the police and the judiciary have devoted two decades to the pursuit of possession for personal consumption or micro-trafficking, but not of crimes such as money laundering, the entry of precursor chemicals, the trade of drugs without prescription established in the narcotics law. "On average, 70% of the cases have been for possession for personal consumption, 20% for simple possession and only 10% of the cases reasons of drug trafficking. But of that 10%, existing data does not identify how many cases are small-scale 'dealers' in neighborhoods and how many correspond to international traffic."

In this context, and facing a global increase of 72.5% in the enforcement of the narcotics act between 1999 and 2006, it is essential to create opportunities for informed public debate with a view to promoting non-punitive policies based on research evidence to respond effectively to the various problems associated with drugs and discuss the harmful effects of criminalization in relation to access to health care, especially in the case of HIV care. To that end, Intercambios organizes since 2003 an annual National Conference on Drug Policy in the Auditorium of the Chamber of Deputies. This continuous work contributed to place the subject on the public agenda.

Nine projects from various political forces are currently being discussed in Argentina to amend the current Law on Narcotic Drugs (23737). Five of them seek to decriminalize cultivation for personal use and possession for personal consumption. Another project is aimed at changing the law on the entry of penalized precursor chemicals into the country, and another one seeks transparency in the destruction of illegal narcotics or items intended for their manufacture. However, there are two projects that aim to increase the penalties.

In turn, in order to generate regional exchange between academics, policy makers and civil society, and keep the map on drug use, related problems, policies and interventions in the region updated, three Latin American Conferences on Drug Policy have been conducted since 2009 (Buenos Aires, Rio de Janeiro and Mexico, respectively).

## Public Report

The work at Diversia Radio Foundation, locally, and at the Key Correspondent Team for Latin America and the Caribbean National as well as national Focal Point of the Global Youth Coalition on HIV/AIDS, at the international level, has permitted to observe and have an insight into the reality of the HIV/AIDS in Colombia in order to work towards a achieving better quality of life for the young people living with HIV in the country.

After three years of experience related with this topic, first reporting from civic journalism, and later from the implementation of projects aimed at raising awareness and visibility of the issue to reverse stigma and discrimination, different realities of the situation of HIV and youth have been observed in Colombia, and more specifically regarding LGBT (Lesbian, Gay, Bisexual and Transgender) and IDU (Injection Drug Users).

The implementation of these projects gave us the opportunity to discover the reality of Colombia, where the youth population does not have the necessary information to protect themselves against HIV/AIDS and STIs. This is due to the lack of a National Education comprehensive plan based on Sexual and Reproductive Rights. The relevant authorities justify this absence in local and national discussions claiming morality, taboo and religious pressure. This adds to the disinformation of the adult population, which is responsible for educating and young Colombians. Meanwhile, young people see the sexual experience as something they have to perform in the early years of their lives, and which is linked to other practices such as alcohol, cigarette and illicit psychoactive substances consumption (since the use of personal doses was banned) that compromise their ability for self-care and makes them more vulnerable to the infection.

This, together with current social problems within and outside their homes, which are increasingly dysfunctional due to poor communication between parents and children, and current violence in the country, which models people in an environment of intolerance and lack of respect, results in the possibility for young people start an irresponsible use of psychoactive drugs. As mentioned above, this makes them most vulnerable not only to the epidemic but also to other national issues such as student absenteeism and university dropout.

The violence that affects our country, based on a war on drug trafficking and kidnappings, has increased the number of heroin users in adolescents and young people of the coffee area. This area formerly recognized by its rich flora, fauna and its participation in the national economy by the production of coffee, is now affected with an increase of more than 100% in young heroin users in less than two years, with the subsequent increase in new infections. Young people across the country have no information about the prevention of the epidemic or youth-friendly services. This adds to poor training of their workers to avoid and prevent stigma and discrimination. An interview in a remote area of the country, the Coordination for Public Health Surveillance affirmed that prevention efforts were impossible due to lack of support from academic institutions and teachers, and of local church for considering that these activities would encourage youth sexual intercourses (as if they didn't occur!) <sup>1</sup>

This type of situation, linked to low ownership in youths over the defense of human rights, has serious consequences in the participation youth should have in decision-making processes for HIV in the country. There is not enough information to perform effective prevention efforts and young people are not into self-teaching, and do intend to be key actors in the process of developing new prevention or achieving results in the Universal Access targets including zero new infections, zero AIDS-related deaths, and access to treatment. Although violence is a fundamental part of the increase in new infections, so is the poverty suffered by millions of Colombians, which hinders access to treatment. Just to cite one example, we recently came to know the case of a young gay man of 21 who was infected by his partner after three years of relationship. He is still enthusiastic with

<sup>1</sup> MORA BELLO, Diego Leonardo. *Entre actividades y algunas denuncias, Colombia conmemoró el Día Mundial del Sida*. Key Correspondents. December 03, 2010. Available at: <http://www.corresponsalesclave.org/2010/12/entre-actividades-y-algunas-denuncias-colombia-conmemoro-el-dia-mundial-del-sida.html>, last access. May 04, 2011.

moving on with his professional life in the nursing sector but he is concerned about not having a job an income to access treatment and improve his quality of life. Barriers to access include: violence, drugs, poverty and, now, high unemployment rates in the country, which adds to the current crisis in health institutions, thanks to embezzlement by their leaders. In this context it is unlikely that the State can accomplish its obligation of integrating all PLWHA in different antiretroviral treatments.

Therefore, young men and women should enter decision and policy-making spaces and make their voice heard, fighting for generational change, although youth is currently one of the most vulnerable groups to HIV in Colombia. We must act, and we must act now! Where are the youth public policies requiring the State and high authorities including the voices of young people in their local strategies?

There are many other difficulties facing people living with HIV regardless of age, economic status, gender, sexual orientation, gender identity, race and others. The training in the areas of health care and support to these people is almost inexistent, and continuous turnover make it almost impossible to succeed.

Stigma and discrimination is still evident. Transgender women engaged in sex work are daily victims of insults, beatings, and are killed for trying to become leaders in their communities or simply as a result of hate crimes, which are reported by the media as crimes of passion.

In recent meetings, one participant revealed of the record that one emergent problem in throughout the country was the rise of new positive cases among housewives. As result of a machista and patriarchal culture, Colombian men (not generalizing) think they have the right to have sex with several women other than their legal wife, but do not protect themselves from HIV and STIs. Their wives, who stay home, caring for and protecting their children, but will also has unprotected sex. As a declared by a woman in the launch of the "Factors of vulnerability to HIV infection in women," of the National University Colombia, if a woman asks his husband to protect himself, he will believe that she is unfaithful. These are the kind of situations that arise from misinformation and lack of sex education. My question is: What will be the future of our children, grandchildren and others if don't act immediately on the achievement of comprehensive sex education?

The intention is to have laws in the country that result in achieving the MDGs, but also to involve young people across the country in decision-making processes, creating new leaders that may be key actors and not just mere observers, in the best case.

We hope that this kind of issue and many others can be discussed at the Latin American Regional Dialogue, because we are sure this is not just a national issue, and similarities may be found in all countries in Latin America.

**13 Honduras**

**Individual**

### **EXPERIENCE OF A COMPLAINT RESOLVED**

I think is important to tell this story because, of all the violations of rights that we, people living with HIV, undergo almost none is solved. This time, however, we finally won a fight.

In 2009, I was coordinating the National Association of People Living with HIV in Honduras (ASONAPVSIDAH), an organization that advocates for the rights of people living with HIV and their families.

At the end of 2009 I received a call asking for support for a 70-year-old male, who had been taken from his home by her sister in the city of Tela Atlantida. To get rid of him, his sister took him to the San José Hospice located in the city of San Pedro Sula. The sister's objective was to take ownership of the house.

The affected person recovered and called for help. At that moment I went to CONADEH seeking to help this old man who was feeling sad and lonely. They immediately sent a notice to CONADEH in La Ceiba to take the case, which was investigated. The appellant's sister had taken over the house with a lawyer using subterfuge, but two months later it was restored to the old man. One week after he went back home, his sister sent men to physically attack him. The perpetrators got to hurt him, but he was helped by a neighbor. Finally, his sister was called to the Court. A protective order was ruled and now she cannot approach the old man's house or would otherwise be incarcerated.

He now lives calm and grateful for the support he received. At all times I was devoted to the resolution of the problem, and I am particularly pleased to have supported this old person who was even more vulnerable for being HIV positive. His family was grateful for the efforts and concluded if the abuse had not reported the man might have died of sadness.

I invite all those who think their rights are violated to have the courage to denounce such violations, as there is a special law and various organizations that, even despite their weaknesses, can help us.

Remember that a right that is not claimed, is a lost right

14 Panama

Panamanian Association of Trans people

In my country, the mere fact of being a transgender person is synonymous with prostitution, HIV/AIDS, crime, drug addiction, etc.

The colleagues engaged in sex work are victims of violence by the police who, in turn, are their pimps. Transphobia and discrimination from the police have come to the point that we cannot transit public roads even during the day; we are thrown out of restaurants, shops, bars, etc. and publicly exhibited and taken to police headquarters without justification, thus violating Article 21 of the constitution.

**Article 21 of the Constitution of Panamá: No one may be deprived of his liberty, except by virtue of a written order of a competent authority issued in accordance with legal formalities and for a reason previously defined by law.**

We, transgenders are not right-holders, we have no access to education, housing, or any decent job, much less when we are diagnosed with HIV/AIDS. As women transgender the State does not guarantee our security, and even contributes to discrimination. When positive colleagues seek treatment, they are challenged by health personnel and offended for their female garments, because we lack gender identification according to our personality.

Executive Decree No. 332 (July 29, 2008), which repeals Article 12 of the Decree 149 of May 20, 1949.

Considering:

That Article 19 of the Constitution of Panama establishes a principle of non discrimination on grounds of race, birth, social class, sex, religion or political belief.

That the Republic of Panama is a signatory to International Conventions and treaties on Human Rights.

That Decree 149 of May 20, 1949, by which are develop the provisions contained in Article 1 and 3 of the Preliminary Title of Book I and Articles 146 and 147 of Chapter 5, Title I, Book III of the Sanitary Code, in the

repression of prostitution and introducing measures on social hygiene and public morality, criminalizing sodomy, which is how homosexuality was known before 1973.

That the policy of the Ministry of Health, through its National STD, HIV/AIDS is to maintain respect for each person's sexual preferences, without any discrimination of any kind.

## CONTRIBUTIONS

We understand that transgender people:

1. ARE NOT THE PROBLEM BUT PART OF THE SOLUTION.
2. LAWS ARE TO BE CHANGED SO THAT WE IDENTIFIED WITHIN THEM.
3. WE SHOULD IMPLEMENT THE GENDER IDENTITY ACT IN ALL COUNTRIES.
4. SHOULD BE RECOGNIZED AS RIGHT HOLDERS AND BE GIVEN THE SPACE WE DESERVE.

15 El Salvador

YMCA El Salvador

### Introduction

One of the most significant experiences in the empowerment of popular sectors to fight HIV and AIDS was developed about two years ago in the town of Aguilares, north of San Salvador, which included a participatory process for the construction of a legal instrument, which remains an example to the Mesoamerican region.

The "Policy on HIV/AIDS Prevention for the City of Aguilares, department of San Salvador", was developed following a consultative process and with support of various social actors in the municipality. Its formulation involved people living with HIV/AIDS, who contributed their experience.

The technical advisory process has been run by YMCA El Salvador with financial support from American Jewish World Service.

The policy aims to establish a local framework for action to respond to educational needs on the subject, changes in behaviors that impact on the epidemic, the provision of care for people living with HIV/AIDS, the eradication of HIV/AIDS discrimination and stigma among the population. In addition, the aim was to strengthen local capacities for preventive work to reduce the negative impacts of the epidemic in the population and municipality.

This local policy arises from the ascertainment that public policy to combat HIV/AIDS so far developed by the central government, assigns local government a secondary role and subordinate to the central government agencies, not taking advantage of the real potential of municipalities as key partners. This policy accounts for actions that we believe may be established from the municipality level and positively impact the response to HIV/AIDS.

The Municipal Code provides that the municipality is the primary administrative political unit within the State organization, with legal personality, specific territorial jurisdiction and representation (Art. 2). The Political Constitution recognizes economic, technical and administrative autonomy (Arts. 203-204), which implies, according to Article 3 of the Municipal Code, the "free exercise on matters within its competence," the formulation of the budget revenues and expenditures, and the formulation of ordinances and regulations.

Local governments are "the" governments that are closer to the vulnerable and those affected by HIV/AIDS, and

key actors in initiatives promoted by the central government as well as in those promoted by the local civil society. Therefore, local governments have a wide field of action on HIV/AIDS prevention, although their powers are limited by the lack of human and financial resources. Yet, having a local policy allows capturing resources to the development of educational activities on HIV/AIDS.

Although local governments are not meant to promote far-reaching actions on HIV/AIDS, they could take action on two levels: a) an internal effort towards their workers, and b) an external effort towards citizens of the municipality. Local governments can coordinate actions in response to the epidemic of HIV/AIDS, mainly in: prevention, by mobilizing political leadership because they have a clear comparative advantage in their ability to generate a climate of consultation, and effort coordination between multiple actors and institutions, both local and national, governmental or nongovernmental.

The success of prevention efforts depends on how open and frank is the discussion with the population. In this regard, mayors can use their local leadership to combat stigma and promote open and frank discussion on the impact of HIV/AIDS in the daily life of communities and the municipality. Another element is the allocation of own resources and fund-raising for the implementation of preventive measures in addition to strengthening local capacities to tackle the epidemic and reduce its impacts in the municipality.

This policy has also given importance to coordination with governmental and nongovernmental institutions involved and committed to the fight against HIV/AIDS, as well as with the agencies created to address the epidemic at country level: National STD/ HIV/AIDS Program, Ministry of Public Health and Welfare.

## **RATIONALE**

Due to its geographical location and proximity to Greater San Salvador, where the epidemic is concentrated, the Municipality of Aguilares is located on the shores of one of the main roads with constant traffic of people. It is a trade crossroads, which provide the conditions for vulnerability and risk in spreading HIV. These include sex trade, multiple casual partners, myths about condom use and other practices that favor transmission.

Moreover, the rural also has little knowledge of the topic and many myths about sexuality and the real forms of HIV transmission, making them likely to acquire the infection. In addition, stigma and discrimination expressed in the form of violence and intolerance towards people living with HIV/AIDS, which harms coexistence and the exercise of human rights of people with HIV or AIDS.

In 2009, YMCA El Salvador developed an exciting and momentous experience to address this situation and to promote organization, education and mobilization of urban and rural communities. This allowed the design of a policy to prevent HIV/AIDS in Aguilares, north of San Salvador, in cooperation with the City Council and the Ministry of health.

The Council fully endorsed the CITY POLICY ON HIV/AIDS PREVENTION. It is so far the only municipal government that has implemented an instrument of the kind.

Achievements and challenges:

One of the primary challenges is to convert the policy into a law and this can only be done through a municipal ordinance. This is part of the ongoing monitoring work. Today, two years later, this town is at the forefront of the fight against HIV/AIDS.

I am a sex worker and I have always been discriminated and my rights violated for being trans. The police is always after me, not because or when I am with a client but because they know me, they have violated and abused me, they have torn my condoms. People passing through where the area where I work look at me like as if I was the worst thing in the world; they've called me *sidoso* [pejorative for AIDS positive]. It's always the same. Therefore, I am a discriminated and abused sex worker, rejected by my family and the partners I have had.

This is the reason why I created a group of female sex workers here in Panama: women with dignity to live for Panama.

17 Bolivia

Fundación REDVIHDA y REDBOL (Red Boliviana de Personas que Viven con el VIH de Bolivia)  
(Bolivian Network of People Living with HIV in Bolivia)

### Report on Access to ARVs in Colombia, Legislation and Actions in HIV and the AIDS epidemic.

- For: THE LAW can transform the responses to HIV. Global Commission on HIV and Rights.
- From: REDVIHDA<sup>1</sup> – REDBOL<sup>2</sup> Foundation
- Written by: Julio Cesar Aguilera Hurtado<sup>3</sup>

#### Situation of the Epidemic

The HIV and AIDS epidemic in Bolivia has increased notably. From 1984 to 2010, there have been 5,000 registered cases of HIV and AIDS. To date, more than 500 people have died as a result of HIV. Actual figures estimate that there are currently 4,500 people living with HIV. Of this total, there are 3,500 with HIV and 1,500 with AIDS. Of these, only 1,030 took antiretroviral drugs for HIV through September 2009.

HIV has proved to be not only a virus but a moral virus, demonstrating a marked tendency of discrimination and stigma.

The systematic violation of human rights in relation to HIV in Bolivia became increasingly vulnerable to the HIV epidemic as the epidemic spread rapidly in the country. The increase of the HIV epidemic also produced an increase in stigmatization and discrimination. There is now an Observatory for Human Rights and HIV to protect against these violations.

#### LIFE Access

The REDVIHDA Foundation worked with human rights issues with the support of HIVOS, CORDAID, FONDO MUNDIAL. It has also presented 23 Writs for Injunctive Relief to the Bolivian State, specifically to the Health and Sports Ministry, to ensure the provision of antiretroviral treatment. On the other hand, it has achieved one Writ for Injunctive Relief to prevent the discrimination of foreign citizens living with HIV, forcing the Vice Ministry of Immigration to return the passport of a Brazilian citizen and to provide all of the safeguards against discrimination. The Foundation has also brought a case against a hotel to avoid that a person living with HIV be

<sup>1</sup> Fundación red Cruceña de Apoyo Integral a Personas con VIH de Santa Cruz – Bolivia (REDVIHDA), Con personería Jurídica Nro. 4/03 Legalmente Establecida en Bolivia desde el 2001.

<sup>2</sup> La REDVIHDA es miembro de la Red Boliviana de Personas que Viven con el VIH de Bolivia (REDBOL) con personería Jurídica 5/05 Legalmente Establecida en Bolivia desde el 2005.

<sup>3</sup> Es un activista de los Derechos Humanos de las Personas que viven con el VIH de Bolivia miembro fundador de REDBOL y REDVIHDA, trabajó en diversos procesos legales como ser: Impulsar la Aprobación de la Ley 3729 Ley para la Defensa de los Derechos Humanos de las Personas con VIH de Bolivia, Prevención de VIH y el Sida en Bolivia. Diferentes procesos Legales como ser Medidas y Amparos Legales en Materia sobre VIH

fired from his/her job, obliging this entity to provide all of the civil liberties to this citizen. In addition, the Foundation worked on more than two documented complaints about discrimination against children living with and affected by HIV in educational institutions. Finally, over 150 complaints have been presented in relation to the lack in continuity of the HIV antiretroviral treatments in front of Bolivia's Ombudsman.

*To better document this report, "Precautionary Measures" are detailed.*

*REDBOL, building on its founding in July 2001 in the Bolivian city of Cochabamba, with the support of the Institute for Human Development and UNAIDS. In order to motivate many PLWHA attendees to the event, who panicked knowing that many people had died as a clinical consequence of HIV (AIDS), the political action known as Precautionary Measures was pursued.*

*52 people requested the Precautionary Measures from the Inter American Commission on Human Rights in August 2002. Less than 50 percent of these people are still alive today.*

*The Request, made in conjunction with AGUA BUENA (GOOD WATER), an NGO that defends human rights in Costa Rica and for REDBOL, has made an impact within two years, as international pressure has had more effect than national pressure. The Bolivian Ombudsman and other allies subsequently joined the cause.*

*On October 3, 2002, the Inter American Commission on Human Rights (IACHR) favored the PLWA so that they would benefit from antiretroviral treatment for HIV. At that time, the information sheet circulated around the Bolivian government, from the Ministry of Human Rights to the Ministry of Justice without any outcome. On February 1, 2003, the IACHR requested a report from the Bolivian government on PLWA. On August 21, 2003, the Health Ministry communicated to the Ministry of Foreign Affairs that it would purchase treatment for 48 people, because 4 people had already died. Likewise, the Ministry of Health and Sports notified that "the purchase of the ARV was made with money for the National Treasury through PROSIN and the National STI/AIDS Program. A quote from an Indian pharmaceutical company named CIPLA was requested on October 9, 2003; and in November, the purchase order was placed through the drug importer SOUTH AMERICAN EXPRES (SAE).*

*The ARVs arrived to the country on December 17, 2003 and were then distributed to the different centers of the Departmental STI/HIV-AIDS Programs. The ARV first arrived to Bolivia in January 2004. The Government of Brazil (PCI Project, Bilateral Agreement) donated 100 antiretroviral to Bolivia; and on December 10, 2003, the Bolivian government bought the "missing" ARV, only a three-month supply, with the National Treasury money. Additionally, starting in April 2004, the ARV arrived to Bolivia, thanks to the expansion of the PCI project, adding 200 treatments to total 300. As of this date, no further treatments were purchased with the money of the National Treasury. Only the ARVs donated by Brazil remained.*

*However, it must be highlighted that 23 people, 16 men and 7 women, died waiting for the ARVs to arrive to Bolivia. 29 survivors, 16 men and 13 women, presented a Writ for Injunctive Relief to the Bolivian government (a total of 52 PLWA). In total, there were 32 men and 20 women with these precautionary measures. By geographic region, one person died in Cochabamba, 11 in La Paz and 11 in Santa Cruz, totaling 23 deaths. The survivors by region include 19 in La Paz and 10 in Santa Cruz, a total of 29 living people.*

## **Laws and HIV**

*The government initially created Resolution 0660, the first document issued by the Bolivian government on HIV and AIDS, modified in response to the demands embodied in Ministerial Resolution N<sup>o</sup>. 0711 for the Prevention and Monitoring of HIV/AIDS in Bolivia. In theory, this resolves all of the PLWHA's problems, but the actual story in Bolivia is a different one.*

*A very important document – of the Public Defender headed by Ana Maria Romero in 2003 – enacted the Resolution in Defense of Human Rights of people living with HIV. Theoretically, it is one of the first legal documents in Bolivia where human rights, especially health and life, are respected.*

*Parallely, a draft law on the Prevention of HIV and AIDS in Bolivia was designed, an effort in which many independent pioneering leaders from each region were involved well before the REDBOL movement, since 1999 approximately. When the review of the Resolution 0660 began, starting in 2002, REDBOL's own PLWHA initiative was important in later enacting Ministerial Resolution Nº 0711.*

Bolivian legislation has worked hard in three stages to develop the AIDS Law project in Bolivia, in the enactment of the draft and in the lobby for its approval. When the law was approved as Law 3729, work was done in regulating the Law 0451. Both instruments were great struggles in securing the rights and duties of people with HIV in Bolivia.

18 Nicaragua

**Grupo nicaraguense de mujeres lesbianas SAFO  
(Nicaraguan Group of Lesbian Women SAFO)**

### **Public exclusion of the lesbian woman in the response to HIV**

Since its beginnings, the Nicaraguan Group of lesbian women SAFO, has worked for the health of lesbian women.

In relation to everything referring to HIV and the lesbian woman, there are few studies that can demonstrate this reality with concrete facts. We know that in the United States, there have been investigations and that there have been efforts in Latin America to investigate this preoccupying topic that affects the lesbian population.

The SAFO group had the opportunity to participate in the **Look at Sexual Diversity Investigation** that took place from 2008-2009 and was published until the year 2010, in which there is a chapter about the particularities of women. Above all lesbian health and the results are important as women continue to manifest that HIV testing is not done. On one hand it reflects why campaigns are directed to other populations such as HSH, TRANS and HOMO SEXUALS, showing that there is no information directed to the lesbian sector, making the lesbian woman invisible. This investigation was realized with the Strategic Group of Human Rights for Sexual Diversity. The investigation can be found on the page of each of the groups that make up the Strategic Group.

As a member of ILGALAC (the international organization of gay, lesbians, bisexuals and Trans), SAFO participated in the Conference held in Brazil in 2010, in which lesbian groups manifested our preoccupation about the topic of lesbian health and HIV. And, the initiative to realize a study at a Latin American level arose, a study that will be published in May of this year. It addresses aspects of sexual and reproductive health, legislative aspects, and HIV/AIDS prevention in the lesbian and bisexual population in Latin America.

In continuing our effort of making lesbian women visible and deepening health aspects, we achieved participation in the Comprehensive Care for HIV/AIDS 2010 Diploma realized by the CIES-UNAN, TERRANOVA, GC, FUNDACION XOCHIQUETZAL, EUROPEAN UNION. The final work was to present an investigation and we presented **the violation of sexual and reproductive right of the lesbian woman in Managua**. Once again, we found that women did not take care of their health, did not take the HIV test for lack of information directed towards lesbian women. It can be found on the CIES-UNAN page.

The campaigns, as previously mentioned, are directed towards other populations in the case of Nicaragua. Epidemiological surveillance studies have been done about attitudes, practices and knowledge such as those recently presented by different organizations that with homosexuals, men who have sex, Trans and sex workers.

Our experience has been to coordinate with Latin American lesbian groups that have some material about HIV-AIDS and lesbian women suited to our needs. We have knowledge that there are lesbian and bisexual persons who perform sex work, but as long as there is no study to demonstrate this reality, it will remain invisible in campaigns, in information and in addressing HIV-AIDS.

We have made use of the material of suitable organizations that work with the subject, that use the male condom to simulate the latex barrier for oral sex, to protect toys with male condoms, to explain the same condom should not be used in different parts of the body, but changed.

From our beginnings, we have been identified as human rights defenders. We have realized forums, conferences, protests to demand our rights as lesbian women. We are an internationally and nationally recognized group that has been established for eight years.

We are participants in the female sector of the MCP since 2010 and also meet with decision-makers to share results of the investigation dealing primarily with the particularities of lesbian women and their health.

We have also worked to coordinate the Special Attorney for Sexual Diversity, initiating processes of sensitization and training with police, teachers, university authorities, among others.

For us, it is vitally important that our voice be heard, and not only heard, but included within the initiatives that the World Forum can develop in the coming years.

The study on lesbian women and HIV-AIDS is crucial for HIV-AIDS care, prevention campaigns, information, HIV-AIDS testing as all populations must be included without exception.

19 Latin America

Individual

### **Legislation as a barrier to accessing and enjoying the exercise of human rights, particularly in sex work.**

Among the proposed goals of sex workers in Latin America and the Caribbean is to guarantee full enjoyment of human rights by all persons dedicated to sex work as a means of earning a daily living.

As such, we have been able to observe a common reality for those who engage in sex work – the inability to fully enjoy rights due to the imposition of legislation that violates individual rights in a supposed and unfounded fight to protect social values of certain societal groups.

The Universal Declaration of Human Rights (received by the distinct legal systems of Latin America) sets forth in Article 1 that “All human beings are born free and equal...” In turn, the 2<sup>nd</sup> article states that “everyone is entitled to all the rights and freedoms...” and continues in the 3<sup>rd</sup> article to state that “Everyone has the right to life, liberty and security of person.” Under article 7, it adds that “All are equal before the law...” and, in Article 12, that “No one shall be subjected to arbitrary interference with his privacy...”

These articles are reproduced minimally as a means to exemplify and allow us to first look at the reality of the people we represent, namely those engaged in sex work in Latin America.

Notwithstanding, these rights that have been recognized, such as the right to privacy, right to life that includes not only the right to health, among others, and the given right not to be killed, but also the right to choose one’s own life project that a person may opt or accept, are perceived as unreasonable and have been unjustifiably constrained by various punitive standards issued by different countries under the pretext of pursuing the common good of society.

In this way, we find those countries that prohibit sex work, understanding it as a direct cause of venereal diseases; countries that in their fight against international human trafficking, dictate regulations that either directly prohibit or seek to punish clients and night club supporters, thus generating an indirect prohibition.

There are also countries that, as in most cases, in defending “morality” and good behavior or in the defense of public order, prohibit the activity or punish certain of the forms in which it manifests itself.

Whatever the motive chosen by the distinct countries to directly or indirectly constrain the rights of those who engage in sex work in determining their own life project, what is certain is that the measures adopted, far from having the anticipated results, only cause further deterioration in the socio-cultural conditions of workers. This complicates access to health systems and social security, making it increasingly impossible to fully enjoy and exercise the human rights recognized by most international conventions and each country’s national constitution.

This curtailment of rights and the constant police persecution, protected by laws that, far from recognizing sex work as a legal activity, tend to criminalize it, means that practicing sex workers tend to go underground, thereby losing their power to negotiate conditions that will regulate customer activity. These measures distance them from health centers, as they fear being denounced or stigmatized by medical personnel that is rarely adequately sensitized on the matter. It also undermines the effectiveness of laws enacted to prevent crime because many times those who exercise this activity fear criminal involvement, or for fear of losing their income source, avoid being called as witnesses in court cases.

The reality in Latin America shows us:

**Argentina:** Jujuy police constantly stop the AMMAR militants. Their companions are arrested by the Second Precincts, for two reasons including “vagrancy” and “background checks.”

Sex Workers have been murdered in Mar del Plata, Sierra Grande, Cordoba, La Pampa, Santa Fe.

**Dominican Republic:** A prohibition on the consumption and sale of alcoholic beverages has been in effect since 2007. This law has affected sex workers who work in the business, as they now must abide by this law to avoid being arrested or fined. “The companions go in search of sustenance for their families, and in light of this situation, have to go to the streets where they are mistreated and abused by police authorities. This measure does not include touristic zone where the law does not apply,” said Miriam Gonzalez of the RedTraSex and representative of the MODEMU.

**Chile:** More attempts to fine sex workers - the mayor of the Las Condes municipality, Francisco de La Maza, put forth an attempt to criminalize sex workers with a municipal ordinance that fines sex workers working in the streets.

**México:** In the town of Apizaco, the Joint Antinarcotics Unit of the Federal Investigation Agency violently broke up a center of independent sex workers where the companions that worked organized themselves without networks of pimps or sex trafficking. The detainees are followers of “The Other Campaign” promoted by the Zapatistas. The repression occurs in order to implement a national project of tolerance zones. The Network of Mexican Sex Work denounced that the project promotes trafficking networks and encourages sexual exploitation of children.

**Honduras:** A Disease Control Card was established, developed by the Ministry of Health, for sex workers to maintain a record of monthly appointments in the Clinic for Comprehensive Care for Sexually Transmitted Disease Sections (UMIETS in Spanish) of health centers. However, police have determined another use for it. Those women who fail to attend their appointments are arrested at the police station and use this card to make them stop their sex work. The police continue to commit abuses with women and sometimes even charge them money for not arresting them.

**Ecuador:** 15 female sex workers were inspected with vaginal and anal controls by a police official who never changed latex gloves during an antinarcotics operative in a sex work house.

**Bolivia, El Alto:** Sex Workers from El Alto have been attacked by a mass of residents, beaten, tortured, clothes

burnt, robbed of their few belongings. Those responsible of such acts of violence walk freely with impunity and the police, instead of protecting the workers, attack them as criminals. Lily Cortes, leader of the sex workers of El Alto, the poorest city in the country and adjacent to La Paz, said that if they are not offered “labor guarantees”, after sewing their lips today, tomorrow they will be “buried alive in coffins.”

These instances serve simply to demonstrate the reality experienced in some of the countries that make up the network. The reality in terms of health indicates that a great deal of the Latin American countries deny care and medicine in the health centers. The situation is exacerbated in the case of antiretrovirals. Sometimes, health centers may be accessed, but when a medicine is prescribed to the worker, the drug is not available in the hospital and many times they do not even have access to purchase the drug, which generates dismay in health controls knowing that one cannot perform or complete treatment.

In some Latin American countries, Sex Workers are still obliged to have HIV tests and sometimes even to pay for health records. In Mexico’s case, some of its states require that test results be requested in specific and particularly expensive laboratories. All of this leads to a degree of reluctance and rejection by those who involved in sex work to initiate or pursue treatments.

In the specific case of Argentina, a joint effort by the AMMAR organization and the National Health Ministry demonstrates how the recognition of the existence of those engaging in this activity, rather than its concealment, allowed for the taking of measures such as training and awareness. In less than three years, this succeeded in reducing more than 50% of HIV prevalence in the sex worker population.

There is clearly a need for an urgent review of legislation at not only an American level, but globally, in order to achieve respect for sex workers as human beings. It is the recognition and not the indifference or denial that will allow for the generation of a more just and healthy society in which all people have access to the full enjoyment of their rights.

20 Argentina

Fundación para Estudio e Investigación de la Mujer (FEIM)

### Submission from the Foundation for the Study and Investigation of Women (FEIM), Argentina

As in all the world, women and children in Argentina are faced with multiple types of discrimination and human rights violations, including their sexual and reproductive rights.

Many important **barriers to the prevention of HIV in women, young people and adolescents** still exist in the country. These groups lack information about their sexuality and sexual and reproductive health in relation to HIV transmission. This is due, on one hand, to non-implementation of the National Comprehensive Sexual Education Law adopted in 2006, a government omission which violates the rights of children and young people by excluding them from access to information, and therefore limiting the ability to prevent HIV infection in this population. On the other hand, there is a lack of sexual health and reproductive counseling and access to contraceptive methods including condoms for teenagers. Few teens have access adolescent services and those to which they do have access offer very little in the way of HIV/AIDS prevention counseling. What’s more, there is a lack of equipment and trained health personnel for this kind of care and in many cases, adolescents are denied the care if unaccompanied by an adult, although not required by law.

There are also difficulties in accessing essential **supplies for the prevention of HIV** and unplanned pregnancy, such as male condoms and anti-contraceptive methods – MAC. Regarding male condoms, although they are available and their dissemination guaranteed free of charge by law, multiple obstacles to accessing them are reported, including insufficient distribution and quantity, being required to present a national identification document and signing for receipt, and especially the frequent requirement that adolescents be accompanied by an adult. The

female contraceptive is not distributed in the public health centers and is not commercialized either. **The lack of access to female contraceptive as an effective method of control for women, freeing them from dependence on the male decision for prevention, represents an important obstacle in the prevention of HIV transmission in women.** The provision of MAC is also very limited, and women living with HIV often only have access to male contraception and not to other MAC because it is believed that they should not have children or sexual relations. The intrauterine device (IUD) is not prescribed to women living with HIV/AIDS because it is believed that this promotes infection, a notion that has been disproven. Double protection (condom and MAC) is not promoted either as a safer method for the prevention of HIV transmission and unplanned pregnancy.

**Besides, access to condoms as much as other contraceptive measures is hampered by the predominance of moral values, and prejudicial and prescriptive attitudes with respect to sexuality on behalf of the personnel of health administrators.**

The obstacles faced by women, young people and adolescents in exercising their sexual and reproductive rights, are accentuated by women living with HIV/AIDS (WLWHA), who suffer great levels of stigmatization and discrimination in distinct environments. This includes not only in relation to their partner, families and communities but also with those in **the health, justice, security forces sector who have gender biases, are influenced by myths surrounding HIV and are ignorant of the linkages between HIV and violence, which result in discriminatory conduct and violence towards women both as women and persons living with HIV.**

There are **strong prejudices against the sexuality of WLWHA** and their right to exercise their sexuality and reproduction are not respected. On the other hand, for those not living with HIV, there is the false social belief regarding HIV information provided by a partner. There are registered cases of forced sterilization, of WLWHA, without consent, by health care personnel based on the prejudice that WLWHA should not have children. This represents a serious violation of their reproductive rights in deciding whether to have children, when, how and with whom. Paradoxically, surgical contraception is denied to women living with HIV.

**Women experience violence as a consequence of living with HIV through discriminatory and abusive situations at the hands of specialized and non-specialized health care personnel.** The discrimination that exists in sexual and reproductive health care services can also result in the personnel refusing to treat WLWHA for fear of contamination and/or contamination of other women being treated. The social construction and myths surrounding AIDS are evident in the attitudes and practices of the health care providers, despite the fact that these medical professional supposedly have scientific and up-to-date information about the sickness. **In some cases, women have to suffer long waits to be attended by health professional, and in other cases, are refused appointments or the performance of a procedure.**

**Other practices that exist in the health sector that constitute violations of privacy and autonomy of all people living with HIV/AIDS were the public revelations of the serological condition and the absence of informed consent as well as counseling prior to and following the diagnostic.** In many cases, the health professionals tried to justify the violation of confidentiality as an attempt to help the women whom they considered weak and incapable of handling the HIV positive diagnosis. "...they gave me the HIV test but I never signed anything. They spoke to me as if I knew what it was. When they had the results, they did not tell me, they told my mother and my husband who cared for me 24 hours a day.." (Patricia, 37 years old, Argentina). The violation of confidentiality puts women living with HIV at risk of discrimination and violence at the hands of their partner or family environment.

Within the framework of the **"Two faces of the same reality: Violence Against Women – VAW – and feminization of HIV/AIDS in Mercosur"** project, coordinated by FEIM during 2009 and 2010, a qualitative and quantitative investigation was developed in Argentina and in three other South American countries: Brazil, Chile and Uruguay, with the objective of highlighting the magnitude of the association between VAW and HIV/AIDS, and to promote public policies that confront care and prevention of both in a comprehensive way.

In Argentina, in addition to providing information about discrimination and violence towards WLWHA in the health sector, as mentioned earlier, this study also evidences **practices in the justice and public forces branches, based on gender bias, myths surrounding HIV and the ignorance of linkages between HIV and violence.**

Security forces were represented in most of the stories as re-victims and as a poor resource in the face of violence suffered by women. In the case of Argentina, women related that when denouncing situations of violence, the police reacted by minimizing the incident, naturalizing domestic violence and denying the existence of a crime. Although the majority of the women interviewed were victims of violence at the hands of their partners or ex-partners, none of them mentioned that their partner or husband had been detained by police forces.

The experiences of women demonstrate the long and tedious process to which a female victim of violence must be submitted in order to file a criminal or civil action to obtain civil protection. This should be rapidly accessible, particularly taking into account the emergency situation and the risk of violence lived by and experienced by women and their children. The feeling of helplessness generated by justice and security force behavior leads to women not seeking protection, motivation or help in either sector, producing more victims.

In the case of Argentina, although by law there is a protection from, prevention of and care for all forms of violence against women, as well as legislation that guarantees assistance and treatment for people living with the virus, **in reality there exist legitimate practices and several institutionalized cases in the justice, health and security force environments that continue to violate and conceal the rights of women, particularly women living with HIV, sustaining and reproducing the different forms of violence which they suffer.** The law approved in 2009 is still not applied and women are victims of violence more and more, everyday.

The discrimination and abuse experienced by the women interviewed demonstrates the lack of training in health care, security and justice personnel surrounding gender violence, HIV and the linkages. As such, the absence of training combines with the absence of national protocols for the comprehensive care for female victims of sexual and other violence, leaving women in vulnerable situations, not only in the face of violence and its consequences, but also in the face of HIV infection **due to the fact that many raped victims are not guaranteed HIV prophylaxis.** These situations are sustained by the absence of policies and programs that address both pandemics in an articulate way with a comprehensive view of the impact of violence and HIV on the lives of women.

21 Bolivia

ADESPROC LIBERTAD GLBT

## HOMOPHOBIA AND HIV/AIDS

*“Relationship between homophobia in health personnel of Departmental Monitoring, Information and Reference Centers (CDVIRs in Spanish) and HIV/AIDS testing for people in the LGBT and MSM population.”*

**Research submission:** Bolivia has very little information that describes continuous and sustainable characteristics of populations most affected by the epidemic. At the same time, this scarcity of information exists despite the profound needs of vulnerable populations regarding the use, coverage and access to prevention, diagnosis and treatment of STDs/HIV/AIDS.

Given that the sexual activity between persons of the same sex is still frowned upon by society, they are likely to remain hidden and take place in a clandestine manner. Therefore, they cannot be disclosed to health providers and this actually contributes to the spread of stereotypes and absurd simplifications, jeopardizing the gathering of health information, which could provide a better understanding of the complexities of gay and MSM populations.

In this sense, we try to determine the relationship between homophobia of CDVIR health personnel and the access of the LGBT Lesbian, Gay, Bisexual and Trans population's access to HIV/AIDS testing in the cities of Santa Cruz, Trinidad, Tarija, Oruro, Potosi and La Paz.

With respect to methodology, a non-experimental type of study was used. It was done without the manipulation of variables, through the simple observation followed by analysis of phenomena in their natural context. To this end, focus groups were developed in each department to gather information from participants in the LGBT communities while in-depth interviews directed towards health personnel in the Departmental Monitoring, Information and Reference Centers (CDVIR) were conducted.

When discussing the adequate level of access to prevention and diagnostic services for STDS and HIV/AIDS in the Gay and MSM populations, the answer is obviously complex. The findings from the focus groups are diverse and more so if we contrast the responses between departments.

Meanwhile, homophobic attitudes and expressions range from gestures of disapproval and nasty comments to overt discrimination and sometimes violence. Health providers are not immune to the influence of homophobia, something that sometimes results in a reduction of the coverage because some people refuse to address the needs and concerns of LGBT and MSM people.

The implementation of a response against the spread of HIV is very common.

In this sense, the LGBT and MSM population constitute a fundamental pillar and for this reason, must work together in this effort. Achieving greater access to public health systems must continue to be the primary goal of the creation of a health and education policy. It should also continue to promote the mobilization of resources for a holistic development of the education sector and in the fight against HIV and AIDS.

It is important to ensure that LGBT and MSM populations are capable of assessing reality to make it possible to precisely determine the degree of personal risk they face with respect to HIV infection. It also clarifies the significance of a healthy lifestyle and its importance in the reduction of vulnerability to HIV infection, in the promotion of quality of life and in the prolonging of life of people affected by HIV and AIDS.

We must achieve a very important effort in generating a sense of belonging for the LGBT and MSM populations in relation to health services, in which a citizen knows that he/she can access a quality and welcoming service through which their demands for care are met, with the certainty that they will be future clients of the service.

22 Nicaragua

Proyecto Construyendo Alianzas de VIH en el Mundo Rural de Centroamerica

## **Rural and Indigenous Partnership for HIV as a Strategy for Universal Access**

### **Interrelationship between community and politics**

The reality of the rural population is not only considered as living in the fields and working the earth, but also an anthropological-cultural issue, a worldview that is a world of its own, one that is expressed through particular representative, expressive, normative and practical structures.

In various regions of Central American, especially in rural zones, indigenous peoples constitute the majority of the population. The Central American identity is based to a large extent on the living cultures of its indigenous people with their traditions, community values, languages and spirituality.

However, the AIDS epidemic, far from diminishing, increases every day. It is estimated that there are 40 million people living with HIV or AIDS, 90 percent of whom live in developing countries. Central America is a region where the incidence of HIV and AIDS has steadily increased and rural zones still do not appear in national statistics making the real impact unknown in these zones.

Therefore, many questions arise: What is the percentage of people in rural areas and indigenous populations living with HIV? What is the strategy of inclusion of the rural and indigenous sectors in official or private policies and plans? If it was concluded in the discourse on HIV that it has a larger impact in the poorest sectors, why then is the knowledge of the reality of HIV in the rural and indigenous sectors not prioritized?

The general reality of HIV has been addressed by various sectors of society. In some areas, where discrimination related to HIV is apparent in which State institutions are signaled as the principal violators of Human Rights, clinics for people with HIV have been opened.

In this fight against human rights violations, many sectors raise flags, but always with the same colors and the same language for the slogans, calling attention. In the specific case of Guatemala, where most of the population belongs to one of the indigenous groups, the multi-colored flag of the indigenous peoples would go unseen and the slogans in these different languages unheard.

Given that not much has been done directly in these rural zones to focus on rural work, the “Building HIV in Rural Zones” project was implemented on a regional level in 2009, financed by HIVOS and IBIS. It proposed to initiate the exploration of the reality, doing so with the participation of community actors and initially through the work of the Partnership.

Workshops were developed with persons with HIV in developing actions within the project (replicas in its first implementation phase), whose objective was to share information about the generalities of HIV.

One of these replicas was performed with a group of people with HIV, primarily composed of women, indigenous peoples, young people, and with care services that are inaccessible due to remoteness and lack of personnel.

The biggest surprise of this activity was that, although some people had been treated for HIV for over seven years, they had not yet had the opportunity to be heard or accepted in a way that their cultural identity was recognized. The information provided was not understandable and many had questions related to their “fear of pending death” living condition. With this, we concluded that the services, prevention and care did not apply the principle of comprehensive care, especially in the case of people from indigenous and rural zones.

Following the above-mentioned conclusion and continuing to maintain the actions of the partnerships, work continued, and a more in-depth analysis with this group was made to integrate other actors in order to develop the Theater of the Oppressed with people with HIV in indigenous and rural zones.

**Alliance for Community Change:** this is one of the directions maintained by the vision of the alliance, along with the integration of people living with HIV from the communities. The partnership enabled the analysis of:

1. Although laws that protect people with HIV exist, there is not a system that contemplates daily life and that responds and accompanies the affected people, their families and close-ones.
2. Many of the people who work with people with HIV were not prepared to support concrete cases, although they recited the existence of the law in favor of PLWHA.
3. That the people from organizations that work in HIV often also furthered discrimination.
4. The most striking cases of stigmatization and discrimination stated or presented themselves at home, in

the family and the community, and this no one had considered.

**Changes at a community level:** It is possible to enumerate an number of changes, but the most important change was that women, after being assisted for a number of years at a center that offered comprehensive care and provided them with medicines, at no point had taken action to defend their rights as women, as indigenous and as people with HIV. However, as a result of the project's different efforts, a change occurred in the perspective and formation of the partnerships (from organizations that worked with HIV, community organizations, people with HIV and other key actors.) The most important achievements included:

1. Many women broke the cycle of violence. Before, they had feared attending half-day appointments but now can delegate the care of the children and the home to the men, which allows them to go out and speak to other communities. The work has been done based on the methodology of self-support groups, in which personal situations are identified that are projected onto others. This makes it possible to highlight a reality, one which had not been spoken of before and seeks alternatives to diminish the situations presented on a personal as well as social level.
2. In the case of community stigma, the women have developed the skills to push and advocate with actors in the protection sectors (police, judge, mayor, etc.) to act immediately on behalf of people with HIV.
3. Women in the past were scared of speaking out in public (as a person with HIV but also because they feared speaking "differently".) Now they attend public protests in which they demand recognition of their cultural identity and the respect of their rights.
4. Local organizations are now more open to the participation of people with HIV, rural realities and the fact that the indigenous have a complexity that cannot be compared to other sectors are gaining recognition.

**Alliance for Political Change:** The alliance's vision equally recognizes that rural and indigenous aspects should be addressed not only in the communities but that many of the changes now arise at another level. This is the political level.

From this perspective, the initiative to form a national Partnership is gaining strength. Various efforts are being made in the country as well as initiatives to form a Central American regional alliance.

The participating institutions are currently completing the phase of formalizing of the partnership, and activities have been developed with the participation and contribution of each of the institutions, from the conditions and contexts where they develop their actions.

**The contributions of work at this level have permitted advances in:**

1. The recognition that HIV affect rural zones and indigenous people, that it must be a priority at the national level and create alternative collective answers.
2. Integration of the rural and indigenous component in the plans and strategies at the national level, in this case in the National Strategic Plan of Guatemala.
3. More coordination, outreach and partnership with grassroots organizations in the city.
4. Improved knowledge of the obstacles experienced in rural and indigenous zones in the full exercise of human rights, which facilitates changes in government plans as well as non-governmental organizations.
5. The understanding of the reality and the most effective strategies in the rural and indigenous zones.

**Principal Lessons**

It is necessary to continue to increase the visibility of the reality of people living with HIV in rural and indigenous zones. Its integration into all existing plans and strategies in the Central American region is imperative within the framework of universal access.

Partnerships enable the strengthening of the capacities of organizations to address HIV in their regions.

Community participation in political structures or spaces represents a challenge in addressing HIV, which generates both results and innovative experiences in the short term.

Within the framework of human rights, maintaining community direction and political direction, not only resolves concrete cases but also encourages changes at a higher level, as well as the comprehensive defense of rights to realize the component of comprehensive care as full respect of people.

23 Guatemala

Colectivo Amigos contra el Sida

### GENERAL SITUATION OF HUMAN RIGHTS FOR GAY, BISEXUAL AND TRANSEXUAL PERSONS IN THE COSTAL CITIES OF GUATEMALA

In 2010, the Friends Against AIDS Collective performed a study that draws an outline of the reality lived by gay, bisexual and transsexual persons living in several cities outside of the capital.

The lack of legal certainty in the country is unfortunate. The people who should guarantee the respect for and lives of our countrymen, such as the police and justice officials, violate these fundamental rights of people of sexual diversity, simply because they have a different sexual orientation.

Of the 97 people interviewed, 65 percent said that the main violators of their rights had been police, family and the homophobic population, in that order. 72 percent reported having been victims of some type of human rights violation, primarily: 1) right to work; 2) right to education; 3) right to health.

*(...) the truth is that the number of homosexuals and lesbians is increasing and that has given them a little confidence and security to allow them to break loose in voicing their grievances and needs although of course it is a fustigadle topic from whaevert point of view... and not to be sexist or discriminatory. But, all sexual deviation is contrary to the will of God and the divine order...*

This is one of the comments made by a public official charged with enforcing justice and equality, and as such, reflects the harsh reality that the LGBTI community faces.

The stories told by the affected, engraved in memory, include tales of being unjustly imprisoned and beaten by members of the police or being deprived of liberty in their own homes for having a different sexual orientation or for living with HIV. Here are a few extracts of these stories:

**“In captivity. This is what I say so as not to say that I was enslaved...”**

**“When I went to ask for work in a restaurant, they told me that they only hired women, and not people like this: gay. Because they reflected badly on the business.”**

**“They burned my hands, they burned my feet. My father hung me by my hands, he never accepted me as I am.”**

Within the last year, more than 20 trans and gay people have been assassinated. These are only the ones that we have been able to detect through our networks and friends in the community, but as usual, these cases only serve to fatten the pile of cold files on the desks of our country’s bureaucratic parsimony, operating with inefficient public policies. In addition to the wave of violence that characterizes our Latin American countries, the dead people are irrelevant to our justice officials...they’re sexuality deviation is outside of God’s Will (as stated by the above-mentioned justice official)

The lack of educational opportunities, limited access to employment, health and the added stigmatization and discrimination against LGBTI communities, particularly in rural areas where the social circle is closed and conservative, means that the environment is unfavorable for these populations. Sometimes the only source of work is prostitution, especially for the trans. The social exclusion of these populations leaves them exposed to higher risks of HIV infection, due to the lack of information, education and money which leads them to engage in risky sexual behavior in a context of alcohol and drugs, making them more likely to acquire the virus.

Moreover, our country only generates government policies but no state policy. And, although we have a policy regarding the response to the HIV epidemic, it is worse having it than not having it. We live in a State where the laws can be flexible, and it is tortuous for the gay, bisexual and trans community. Opening a space generates social change in favor of a decent life.

The construction of gender identity, preference, orientation and human sexuality are vital issues for the community integration of sexual diversity and for them to speak out and assert their rights like anyone else.

Finally, it is important to promote adequate and timely mental health services for gay, bisexual, trans and MSM people, as well as for their families, and schools. These can minimize consequences and prevent abuse and undignified treatment that result in human rights violations in reactions to sexual orientation or preference.

24 Guatemala

LAMBDA

### **Stigma, Homophobia and Discrimination in the National Civil Police of Guatemala towards sexual orientation and sex work**

My name is X. I am a gay man who has been working in the area of HIV and STD prevention, as well as the promotion and the defense of human rights for homosexual men, male and female sex workers and trans sex workers in the streets.

Since 2001 to date, I have been a victim of police assault and aggression three times in the exercise of my work and private life. These assaults and aggressions were motivated by homophobia and the intolerance of the exercise of sex work.

Around the years 2001-02, I was making the night rounds of a project I coordinated (Project Rodalinda) through which I visited women, trans and sex workers in the street in Guatemala. At that point in time, the police made continuous rounds (known as Raids, which are illegal, but nevertheless were carried out by the police) to rid the streets of people engaging in sex work. One night, by municipal and gubernatorial order, a group of police, practicing this raid procedure, intercepted me in the vehicle in which we were traveling (and in which we were safeguarding three women in fear of the raid) to perform our prevention work. A group of approximately 20 agents grabbed me, saying that I was interfering in their work, tossing me around like a game ball, to then put me in the patrol car and arrest me without any justification, without negotiation and without reference to our work,

despite our permissions from the Ministry of Departmental Governance.

In the face of this abuse of authority, we filed a complaint, but the case went unprocessed and unpunished.

Around 2002, I went to a public park in Guatemala City with my partner where we walked quietly and sat in an area to talk. As we were leaving, three policemen stopped us and pushed us against the wall, accusing us of hugging and kissing in public (which never happened). They argued that this went against morality and good customs (apart from our laws which are many times the subject extortion and corruption on the part of Guatemalan authorities in relation to matters of sexuality and sex work.) and said that this was a place of family recreation. We filed a complaint with the Public Ministry. The agents and I were summoned to a hearing to process my complaint, but the officers never appeared and the case remains unresolved.

In 2009, we held a fundraising event for our project (United project, creator of the community base for our present organization LAMBDA) in a gay nightclub in downtown Guatemala City. During the activity, around midnight, more than 400 National Civil Police officers, all carrying guns, entered our event and interrupted our activity. They hurt an assistant when they shoved him against a concrete column and put his arms in back of him. They tried to shut down the business, saying that it was a place dedicated to prostitution of men dressed as women.

In the face of this situation, we filed a complaint with the Public Ministry and the Prosecutor for Human rights. I called to follow up a year later and there was no process initiated by the Public Ministry. Again, our complaint went unpunished.

We continue to face assaults, jokes and verbal abuse by police forces, demonstrating that homophobia prevails in the armed forces that are in charge of citizen security.

We are currently in negotiations with the LAMBDA organization to generate a model of training for uniformed personnel on topics of human sexuality, sexual diversity and human rights.

25 Guatemala

OTRANS Queens of the Night

**The importance of influencing the Guatmalan legal framework through specific legislation for the registration of sex and name changes to benefit the transgender population of Guatemala.**

**About OTRANS Queens of the Night.**

The Queens of the Night Trans Organization is a pioneer in the creation of a community base of trans persons (tranvestites, transgendered and transexuals) living in Guatemala.

It began its work in Guatemala City in 2004 and has been looking to expand its work to the rest of the country since 2009 to assist the National Network of Trans Persons, REDTRANS Guatemala. OTRANS currently works in the metropolitan area of Guatemala and with trans people in the interior who are spread out among six groups, principally on the Atlantic and Pacific Coasts. Around 15 percent of the trans participating in the OTRANS study were infected with HIV, which demonstrates the high vulnerability of this group to this epidemic. It is reinforced by the stigmatization and discrimination to which they are subjected, principally due to social exclusion, structural transphobia and the social violence they suffer on a daily basis. Access to comprehensive health in this case is limited because there is no legal recognition of trans persons. The need to gain legal protection in this environment of social violence is more than obvious.

**Current legal framework in Guatemala**

Most human beings develop their personality, determine an identity that coincides with the morphological sex with which they are born. However, there are other people such as the transgendered, transsexuals and intersexuals, whose identities do not coincide with or contradict the sex to which they were assigned at birth.

Regardless of the social response to the trans community as a result of religious beliefs or social customs, now, more than ever, constitutional and international law have deepened the defense of human rights of all peoples. So we ask: How can we continue to deny the vital right to personal identity, the right to difference, the right to truth?

In theory, the rights of all Guatemalans are protected by the Constitution of the Republic of Guatemala and by various international treaties on human rights which carry a greater weight than the constitution itself. In this regard, it is important to note that: The right to identity is protected in article 58, which reads: *Cultural Identity. Recognizing the rights of persons and communities to their cultural identity in accordance to their values, language and customs.*

It is also necessary to remember that Article 4 indirectly calls for equal opportunities and responsibilities, a situation which has not been realized in practice due to the social limitations imposed on the trans community.

The International Convention on Human Rights protect a plexus of rights with the aim of rescuing the dignity of human beings by recognizing and respecting their identity. These include: The American Convention of Human Rights in its articles 3 (right to the recognition of juridical personality), 5 (right to humane treatment), 11 (protection of honor and dignity), 24 (equality before the law). The Covenant on Civil and Political Rights in Articles 7 (right to humane treatment) and 17 (protection of honor and dignity.)

There is also the Convention on the Rights of the Child which provides that all measures adopted by the States concerning children, must grant primary attention to the best interests of the child (art. 3); recognize their inherent right to live (art. 6), have the right to the best standards of health possible (art. 24), guarantee non-arbitrary interference in their private lives (art. 16); assure that a child capable of forming his own views has the right to express these views in all matters which affects him, his opinions considered in function of his age and maturity; and benefit from the right to be heard in any judicial or administrative process that affects him (art. 12).

In 2007, the Yogyakarta Principles<sup>1</sup> on the Implementation of International Humanitarian Law in Relation to Sexual Orientation and Gender Identity were presented, which defined “gender identity” as *each person’s deeply felt internal and individual experience of gender which may or may not correspond to the sex assigned at the moment of birth, including the personal experience of the body (that may involve modification of body appearance or function through medical, surgical or other procedures, as long as these are chosen freely) and other expressions of gender, including dress, manner of speech and mannerisms.*

### **About the specific legislation favorable to the trans community.**

In Guatemala, the legal void for the rectification of the assignation and name of trans persons has not resulted in many laws related to the matter. It is also certain however that these laws have not come about due to the context of invisibility, stigma and discrimination suffered by trans persons. In this sense, although it is another aspect of the human rights of trans persons, it is necessary and important to achieve legal authorization for the reassignment surgery interventions and the rectification of the register, something unthinkable until recently. A gender identity law would assemble many of the historical grievances of trans with the legal environment, allowing them to change their sex and name in the register with their respective national authorities<sup>2</sup>, through an administrative procedure, without having to undergo a painful and costly experience of sexual reassignment

<sup>1</sup> Principios de Yogyakarta, presentados por la Comisión Internacional de Juristas y el Servicio Internacional para los Derechos Humanos. Marzo 2007.

<sup>2</sup> En el caso de Guatemala, en el Registro Nacional de Personas. RENAP y el instrumento jurídico llamado **Documento Personal de Identificación, DPI.**

surgery in order to change their name and sex in the register. In this way, the needs of transexual persons who for health reason cannot undergo certain types of treatment and surgery are attended to.

### **Betting on a law for gender identity.**

Based on the above, the Queens of the Night Trans Organization has initiated the creation and positioning of a draft law in the Congress of Guatemala. This law would essentially enable the change of name and sex in the register, which would lead to a legal recognition of people based on their own gender identity and considerably improve their access to primary rights that are currently being denied.

The proposed law<sup>3</sup> is being developed with the assistance of lawyers sensitive to trans needs. The current draft contemplates the following elements:

- Applicant eligibility requirements.
- Requirements to be followed in order to obtain the change of name and sex in the register.
- Legal scope of the previous measure.
- Body responsible for the process.
- Prohibition for the public exposition of the cases of persons with changes in name and sex register.
- Right to surgical genital reassignment intervention and comprehensive treatments.
- Legal status of minors
- Protection against discriminations.
- Protection against abusive therapies.
- Authority and interpretation of the law.

26 Bolivia

ASUNCAMI (ASOCIACION UN NUEVO CAMINO)

### **Report on the legal situation of HIV**

**Introduction:** Law 3729 "LAW FOR THE PREVENTION OF HIV/AIDS, PROTECTION OF HUMAN RIGHTS AND COMPREHENSIVE MULTIDISCIPLINARY ASSISTANCE FOR PEOPLE LIVING WITH HIV/AIDS"

The regulation was passed subsequently in March 2010, by Supreme Decree N° 0451, two years after the passing of Law 3729

**Legal situation of HIV in Bolivia:** An analysis on the legal situation of PLWHA and vulnerable populations was conducted, and the POLITICAL CONSTITUTION OF THE STATE (JANUARY 2009) recently established the prohibition of all forms of discrimination (Article 14).

It is assumed that PLWHA have the same rights, freedoms and constitutional rights as any Bolivian citizen and the State prohibits and penalizes all forms of discrimination towards PLWHA; the term is applicable even though it is not mentioned.

Article 35: the State of Bolivia will protect the right to health, by promoting public policies aimed at improving the quality of life, collective welfare and free access to health services for the population; it is interpreted that PLWHA are included.

Article 37: about the State's commitment to enforcing the right to health, being one of its priorities the prevention of diseases, including, by extension, HIV and AIDS.

<sup>3</sup> Anteproyecto de Ley de Identidad de Género. Vanegas, William (Abogado y Notario). Guatemala 2011.

IN LAW 3729: article 5 of this law establishes the Rights of PLWHA, among them the right to health, comprehensive care, as well as the obligations of PLWHA.

### **SUPREME DECREE Nº 0451 (MARCH 2010)**

The aim is to regulate Law nº 3729. (With regard to comprehensive health care, right to medicines, prohibition of blood donation, exceptions to confidentiality, free care for PLWHA, among others).

### **LAW Nº 045: AGAINST RACISM AND ALL FORMS OF DISCRIMINATION**

Art. 5 Definition of Discrimination for Health Condition, and article 281ter.- (Discrimination) includes the word illness, penalized with years of imprisonment.

The analysis detected many contradictions with other international regulations, as well as infringements of the rights of vulnerable populations and PLWHA.

#### **Conclusions:**

With regard to the terminology used in the law, such as: “AIDS, Contagion, Carriers”: the proposed international terminology (“Advanced HIV infection, PLWH, Transmission”), recommended by PAHO/WHO, is not used.

Enforceability: The law mentions free access to antiretroviral drugs and medicines for opportunistic diseases for PLWHA, as well as comprehensive care. However, the State entity responsible for allocating the necessary resources is not established; the response to HIV is funded by the Global Fund and cooperation agencies, whereas the State’s Allocation of Economic Resources for the prevention and treatment of HIV and AIDS has not been put into operation.

There are no clear criteria as to the definition of Free multidisciplinary care, social assistance and therapeutic support for PLWHA.

With regard to Sex workers, prostitution is prohibited and HIV tests are compulsory, but the window period (tests every 3 to 6 months or according to regulation) is not taken into consideration; furthermore, there is no social assistance to sex workers with diagnosed HIV; either they stop working or engage in clandestine prostitution.

Confidentiality of PLWHA is mentioned, but any PLWH that knows his/her diagnosis “must inform his/her doctor or sexual partner/s about their condition”, which discourages people to voluntarily take the HIV test, because they think it is better not to know their serological state.

Orphan children with HIV remain vulnerable as long as the State does not provide the necessary social services.

#### **Recommendations:**

It is important to establish clear mechanisms that put into effect the operational capacity of this law and its regulation, in order to stop the epidemic and achieve enforceability in all the cases.

In order to achieve Universal Access, it is necessary to correct legal loopholes, improve current regulations, establish interpretations of the Law in favour of PLWHA and prevention, create public policies, and increase the number of stakeholders for a more comprehensive response.

## Executive Summary

The Latin American and Caribbean Network of Trans People (REDLACTRANS) began its work in the year 2005, as a means of communication between activists to be able to make complaints against violence and hate crimes in the transgender community in the region of Latin America and the Caribbean. According to the study “Transphobia in Latin America” (2008), there are ten transphobic crimes in each country of the region every year, and authorities still haven’t solved any of these crimes.

However, REDLACTRANS (as it is known nowadays) started gaining institutional status recently, with the cooperation between the network and Alliance International in 2008. Two regional meetings were held in Buenos Aires that year, focused on the design and implementation of the Strategic Planning and Statutes of the organization.

Transgender communities are part of the so-called vulnerable populations of Latin America and the Caribbean. The life expectancy for a trans-person in our region is 40 years, whereas for the rest of society it is 70 years.

That is why REDTRANSLAC established its entry into politics as the main objective, to fight transphobia and bring about structural changes that will promote respect for the human rights of transgender people in Latin American societies.

REDTRANSLAC considers that the passing of the Gender Identity Act is a fundamental step to guarantee the respect for identity and gender expression of transgender people. Having an impact on politics represents an essential step to make governments promote a law that will undoubtedly improve access to comprehensive health, education, justice and work.

Today, REDLACTRANS is a network based in Argentina, Bolivia, Brazil, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Panama, Peru, Dominican Republic and Uruguay. Almost all of its grassroots organizations are part of the Country Coordinating Mechanisms (MCPs), except in Chile, Brazil and Paraguay. REDLACTRANS is part of the Horizontal Technical Cooperation Group (GCTH) and the first network made up completely of transgender people. They have submitted a proposal to the Global Fund in order to strengthen community systems and subsequently bring about more effective responses in the fight against HIV-AIDS.

While some countries like Argentina, Brazil and Uruguay, have achieved significant changes with regard to human rights, in other countries like Honduras and Guatemala the transgender community is being literally massacred.

In Latin America and the Caribbean, REDLACTRANS is raising its voice stronger than ever: **“We want more changes!”**

## Background and Socio-cultural context

The transgender community of Latin America and the Caribbean is the worst stricken by the HIV-AIDS epidemic, as indicated in studies carried out by UNAIDS and Alliance in the year 2008. Some countries in the region have HIV-AIDS prevalence rates of 25% and 35%. The Ministry of Health of Argentina, along with REDLACTRANS’ grassroots organization in the country, conducted an epidemiological surveillance that showed a prevalence rate of 33% in the year 2007. The prevalence rate in Peru is 32%.

According to the study “Transphobia in Latin America and the Caribbean”, conducted by REDLACTRANS in 2009, the transgender community in the region is living in a state of exception. Discrimination is institutional, and the invisibility of trans-people is the result of a policy of exclusion which we call (reintroducing Agamben’s analytic category) State of Exception: extermination by exclusion.

Here are some facts that illustrate the state of exception of the transgender community:

- Prostitution is the only way out for trans-people, because the majority are thrown out of their homes at an early age. There are no official numbers on the amount of people thrown out of their homes, but REDLACTRANS RNTs state that it's a high percentage. Despite this, this activity is not recognized nor regulated by any State in the region.
- The number of suicides is also high. Some of the causes that motivate suicide are: discrimination, stigma, being a person living with HIV-AIDS (PLWHA), lack of expectations, impossibility of getting a job, and the non-acceptance of **Gender Identity** by members of families and communities.
- There are approximately **ten transphobic murders** per year recorded in each Latin American country. Numbers could be higher since there are no official records. In the last months, Honduras is the country with the highest number of hate crimes. These crimes are never solved: It's not easy to file a report in a police station, due to the discrimination the victim is likely to be subjected to. Cases are "mislaid" by the justice system.
- There are many causes why trans-people find difficulty **accessing their right to health**. They are treated as MSM (Men who have Sex with Men), thus not acknowledging the gender identity of the trans-person. The civil document with a male's name does not correspond with the appearance of the person, and not having this document obstructs the access to the health system. The condition of a transgender person causes stigma, mockery, and rejection by the administrative personnel and the doctors. Therefore, transgender people feel that the health system is hostile to them, and when they finally resort to it their immune system is extremely deteriorated.
- The health system is precarious. The personnel are not qualified or sensitive to the specificities and necessities of the transgender population.
- There are not comprehensive initiatives in the prevention, access and care of HIV-AIDS for transgender people.
- These difficulties cause a 50% of the transgender population to abandon their treatments.
- 100% of RNTs agree that there are no public policies or that the existing policies are not adequate to deal with the situation of human rights and HIV-AIDS.
- Life expectancy for the transgender population in Latin America is an average of 40 years.

## EXECUTIVE SUMMARY

The rights of people with HIV and populations at greater risk (PEMAR) in Guatemala have to be guaranteed in order to reduce cultural inequalities, stigma and vulnerability, to promote empowerment against the epidemic and to facilitate a larger participation in the demand of their Human Rights. All these actions and their results will effectively contribute to the enjoyment of health and welfare<sup>1</sup>.

Working in the promotion, defence and protection of human rights for people with HIV has become a challenge

<sup>1</sup> See technical document of the PAHO CD50/12 "health and human rights" dealing with three links between public health and the exercise of human rights. Available in: [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=3149&Itemid=2401&lang=es](http://new.paho.org/hq/index.php?option=com_content&task=view&id=3149&Itemid=2401&lang=es)

for Guatemala. 25 years after the first recorded case of HIV, as of September 2010, there have been 22,260 reported cases of HIV, advanced HIV, or AIDS<sup>2</sup>. However, according to estimates by the Ministry of Public Health and Social Assistance (MSPAS), there are 65,705 people with HIV in the country, including children.

Guatemala started strengthening the National System of Monitoring and Evaluation of HIV, through several departments (PNS and SIGSA) of the Ministry of Public Health and Social Assistance. This process includes the evaluation of the situation of human rights of people with HIV and populations at greater risk and vulnerability. The Human Rights Prosecutor's Office, along with Red Legal (Legal Network) and its Human Rights and HIV Observatory, the National Alliance of People living with HIV of Guatemala, with the support of UNAIDS, PAHO/WHO<sup>3</sup> and USAID/PASCA, have joined efforts to promote recent information that will disclose cases of violations against Human Rights of people with HIV and PEMAR recorded in the period from January 2009 to November 2010. This will help establish future actions to guarantee observance of Human Rights, as a strategy for the protection of health and the enforcement of governmental and non-governmental actions to fight the HIV epidemic.

This study includes different chapters that prove the capital importance of its content.

The first chapter deals with the background, using the study conducted by Visión Mundial in 2008 as reference. Said study showed that 95% of people stated that their human rights were violated but they didn't file a complaint<sup>4</sup>, claiming that they didn't understand the process and feared the stigma and discrimination caused by the HIV epidemic in Guatemala. This chapter mentions international, national and regional mechanisms that back the fundamental rights of people with HIV and PEMAR, from the perspective of the full exercise of human rights ratified in the resolutions of the Commission of Human Rights, the Inter-American Commission of Human Rights (CIDH), the technical lineaments of PAHO/WHO and other specialized agencies of the Inter-American and United Nations System, as well as the treaties, conventions and/or universal (UN) and regional (OEA) agreements ratified by the Government of Guatemala<sup>5</sup>.

The second chapter presents the objectives that motivated this research, and the main methodological aspects developed in different stages of the research, which resulted in the elements for the analysis and integration of the report in the following manner:

### **1. Research stages:**

Stage I was centred on the preparation for data collection through the creation of a matrix for obtaining complaints, which was validated by the participants who presented this report<sup>6</sup>; the international, national and regional regulations as well as the documents related to human rights and HIV were also revised in this stage.

Stage II: Securing information. The mapping was carried out by the Alliance, the Legal Network and the branch offices, through the collection of complaints made by 11 NGOs and 15 branch offices of the Human Rights Prosecutor's Office. This information was used to create graphs for the different variables.

<sup>2</sup> Statistics report on HIV and AIDS cases in 2005-2010, for the month of September 2010, of the National Centre of Epidemiology of the National Programme of prevention and control of STD, HIV and AIDS, Ministry of Public Health of Guatemala.

<sup>3</sup> In accordance with Resolution CD50R.8 (2010) "health and human rights" of the PAHO/WHO executive committee, PAHO member states committed themselves to strengthen the technical capacity of their respective health authorities, working with the Human Rights Prosecutor's Office to evaluate the implementation of international instruments for human rights. Resolution CD50R.8 requests the Secretariat of PAHO/WHO to collaborate with civil society organizations and other social stakeholders to protect human rights related to health. Resolution CD50R.8 is available in: [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=3149&Itemid=2401&lang=es](http://new.paho.org/hq/index.php?option=com_content&task=view&id=3149&Itemid=2401&lang=es)

<sup>4</sup> Visión Mundial Study: Final Report of the Consultancy, Percentage of people living with HIV or who declare that their human rights are respected." 5<sup>th</sup> Issue Visión Mundial, 2008. Guatemala. 52 pgs.

<sup>5</sup> Guatemala ratified the International Covenant of Civil and Political Rights; the International Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of Children; the Convention on the Rights of Persons with Disabilities; the American Convention on Human Rights; the Additional Protocol to the American Convention of San Salvador; the Inter-American Convention to prevent, penalize and eradicate violence against Women and the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities, among others. Guatemala has also recognised the jurisdiction of the Inter-American Court of Human Rights.

<sup>6</sup> Meeting of October 2010, delegates of PAHO/WHO, USAID/PASCA, RED LEGAL, ALIANZA NACIONAL, IPDH, FFI.

Stage III: Analysis of results. Its purpose was to consolidate the information coming from different sources, following the order of variables obtained by the matrix of data collection and its respective analysis.

Stage IV: Elaboration and revision of the report. The structure of the terms of reference was established, in accordance with the technical committee and the lineaments of PAHO/WHO.

The document includes the revision and contributions made by the technical committee put together by PAHO/WHO, as well as other international agencies and individuals at national and international level.

2. **Sample:** It is representative and embodies data collected by 22 departments in the country that belong to 11 partner organizations of Legal Network, the National Alliance y 15 branch offices of Human Rights Prosecutor's Office. The total of complaints collected was 313.
3. The report had national coverage, although the records of complaints came only from 20 departments where Legal Network, the Alliance and different branch offices of the Human Rights Prosecutor's Office are represented. Sololá and Zacapa were the only departments with no complaints recorded.

The third chapter describes the results obtained in this study, referring to the causes that motivated the complaints, such as restricted rights, gender, sexual orientation, identification as person with HIV, among other important causes.

The fourth chapter analyses the human rights that were restricted and the relation with results found in previous studies.

The main results are identified with the following variables observed in this research:

Complaints recorded: 313 complaints were collected in total, of which 231 came from civil society organisations, and 82 from branch offices of the Human Rights Prosecutor's Office.

Complaints by departments: Complaints were recorded in 20 departments out of 22 departments at national level, with 50% of the complaints recorded in the department of Guatemala.

Human rights more restricted: The seven more restricted human rights were: Right to Health (46.52%), Right to life and personal integrity (13.16%), Right to social security (13%), Right to work (9.43%), Right to non-discrimination and equality before the law (9%), Right to confidentiality, privacy, honour and dignity (7%) and Right to an education (2%).

Sexual orientation complaints: The study shows that out of the 313 people that filed a complaint, 207 identified themselves as heterosexual, 13 as homosexuals, 11 as transsexuals and 1 as bisexual. It is important to point out that whereas sexual orientation and gender identity are defined by the person that files the complaint, many of the people that did so were afraid of admitting that they belong to a LGBT group.

"The human rights of people with HIV are the same human rights of the people of Guatemala. It is an issue that concerns us all, and not only those people living with HIV, or people working for them or with them. This statement comes from a deep conviction of the Human Rights Prosecutor's Office about the integrity of human rights. This integrity refers not only to a global understanding of the doctrine of human rights, but to our daily social coexistence. In the face of this pandemic there is a need for respect, support, understanding, education, access to health, promotion of special programmes and, most importantly, prevention and access to medicines"<sup>7</sup>.

The conclusions and recommendations suggest actions that could be implemented at short, medium or long term

<sup>7</sup> Extract from María Eugenia Morales de Sierra's (Human Rights Associate Prosecutor) speech at the inauguration of the human rights Workshop in the context of HIV and sexual diversity. Guatemala, November 29, 2010

in order to reduce the violations of human rights and improve the system of processing complaints, exposing every action that affects the enjoyment of a full life, a right guaranteed by the State.

This is the first national report showing the situation of Human Rights related to HIV, and its completion was made possible through the joined efforts of the Legal Network, the Alliance and the Human Rights Prosecutor's Office.

A relevant find was that there were no complaints recorded in Sololá and Zacapa, even though there are records of people with HIV and PEMAR in those departments.

The main recommendations indicate the importance of information and data in strengthening the national monitoring and evaluation system, and thus the decision –making.

29 Honduras

Llanto, Valor y Esfuerzo (LLAVES)

### **Analysis of the Special HIV Law in Honduras, and its limiting factors for the exercise of human rights for Women with HIV in Honduras.**

In Honduras, on November 13<sup>th</sup> 1999, the Special HIV and AIDS Law was published in La Gaceta official journal, under Decree No. 147-99. The Law was regulated on 25<sup>th</sup> July 2003. According to article 1, said Law and its regulation were created with the following purpose: to contribute to the protection and comprehensive promotion of people's health through the necessary actions pertaining to the prevention, research, control and treatment of HIV and AIDS, as well as to the education and information of the population in general.

Eleven years after the passing of the law, its implementation has caused many painful experiences for people with HIV, especially teenage girls and women, and its limiting factors have been exposed. The bad results are related to the discrimination, myths, taboos, lack of awareness-raising and information at the time of the legislation. There was not enough information on the epidemic's situation, the vulnerability factors, the social factors and the causes that make the epidemic affect groups of greater vulnerability, like teenage girls and women with scarce resources, low education or from ethnic groups, like the Garifuna people.

Civil society groups have been revising the Special HIV Law during the last two years, with the intention of creating a bill to reform of the law. During this revision, the following loopholes were found:

- 1) The law does not establish the incorporation of gender perspective
- 2) The law does not establish programmes or services on sexual and reproductive health for girl children and teenagers living with HIV. The only response to this problem is reduced to the distribution of male condoms between women.
- 3) The law does not take into consideration the legal and day-to-day inequalities between men and women in society.
- 4) The law does not take into consideration the actual subordination of women and their greater social and sexual vulnerability with regard to this problem.
- 5) The National AIDS Commission (CONASIDA) consists of 15 sectors, none of them representing the specific interests of women with HIV.
- 6) Sex workers are obliged to go to health care centres where they are **searched and examined**. Whoever does not carry the Health Certificate (Certificado de Salud Sanitario) is subjected to penalties established

in the penal code (Art 30)

- 7) The HIV test is compulsory for couples as a previous requirement before marriage (Art 32)
- 8) The Secretary of Health can carry out tests to determine the existence of the virus, even without the consent of the person in particular.
- 9) The HIV Law establishes that anyone who is diagnosed with HIV is obliged to inform his/her partner (Art 74 and 75). This represents a disadvantage for women, because it is more likely that they know their HIV status before their male partners: Due to the fact that they are more involved in the health system (during the pregnancy and giving birth process), women normally find out if they are living with HIV sooner than their male partners. Especially with the governments' tendency initiated by the suppliers of using HIV tests in prenatal care scenarios. Because there are laws that penalize the exposure and transmission of HIV, and in order to avoid being indicted for exposing their partners to HIV, women that live with HIV are forced to reveal their condition, refuse to have sexual relations or insist on using condoms. However, for many women these actions entail the risk of violence, dispossession, loss of custody of their children and severe abuses.

Civil society, including groups of people with HIV, NGOs, feminist groups and cooperation agencies, are mobilizing for the revision of the Special HIV Law, with the intention of submitting a bill to the National Congress for the reform of the law. The reform proposal will include the mainstreaming of human rights, sexual and reproductive rights of women with HIV, gender and sexual diversity.

San Pedro Sula, May 6, 2011.

30

Honduras

Individual

### **The influence of religion in public policies regarding HIV in Honduras**

Public policies are an expression of the State's power and are aimed at solving the social problems that affect people. However, these policies do not always protect people's rights; on the contrary, they can be restrictive, discriminatory and unjust because they establish unequal relations in the framework of a falsely secular state.

The thing that strikes me the most about Honduras is its profoundly religious culture, consciously or unconsciously present in the lives of their citizens, regardless of their socioeconomic status. In this report I will refer to the manner in which religious culture infiltrates the public policy aimed at managing the prevention of HIV. Honduras is far from being a secular state, which is a determinant factor in a country with one of the highest rates of HIV cases in the Central American region.

The public policy on HIV in Honduras consists of a HIV Law and its regulation, a National Commission of AIDS (CONASIDA), a HIV office or programme belonging to the Secretary of Health and a National Strategic Plan, PENSIDA. A revision of the special HIV law enacted in 1999 proves the ecclesiastical influence in several articles and in the essence of the law itself. This law is aimed exclusively at those people already living with the HIV virus, with the purpose of promoting fidelity and the use of condoms. I wonder how can a public policy regarding a matter of public health be aimed solely at the people already having the virus? And what is the use of promoting condoms exclusively among people living with HIV? The answer may lie in the Vatican's approach to the subject. Since the appearance of the virus, the Vatican considered it God's punishment for unruly people who dared to enjoy sexuality, a view based on the fact that sex is precisely the main channel of transmission, at least in Africa and Latin America. Even in Africa, the church strongly opposes the use of condoms as a means of prevention, since they promote only abstinence and fidelity. The HIV Law refers to condoms only once again; ordering motels to

have them available.

When referring to HIV prevention measures, the law appeals to education on sexual ethics and defines it as a *“Philosophical discipline that reflects on morality (secular or religious), stressing the principles of responsibility, tolerance and respect to diversity”*. This is an outrageous definition of sexuality, because there is nothing more human and essential than sexuality, therefore it cannot be described in the terms of a philosophical discipline. With sexual ethics as a starting point, the church’s objective is to regulate the lives of human beings through the control of human sexuality and the idea of atonement of guilt. According to the law, the National Commission of AIDS is in charge of regulating when HIV couples decide to procreate. After reading this article, one could conclude that the State seems to punish those people with HIV that wish to conceive a child biologically, with the ultimate goal of halting the biological reproduction of people with HIV. At the same time and as I previously mentioned, abortion is a criminal offence in this country.

The National Commission of AIDS works as a governing body that implements the public policy on HIV, establishes the participation of two representatives of the catholic and evangelical churches, several ministers, representatives of various public institutions and only one representatives of people living with HIV. In this situation, it is not likely that initiatives like a sexual education plan or effective campaigns to stop the epidemic will ever prosper; hidden behind the political power represented by the members of parliament, the church exerts its power to alienate people’s consciences and bodies, using a discourse that condemns human beings as creatures driven by sex. That is why the church does not accept the perspective of human rights, sexual education and the use of condoms in the prevention of HIV, because that would mean letting people enjoy the pleasure of sexual contact with other people. Even the reality of the situation in Africa, with the highest rates of transmission of HIV, seems like a plausible evidence for the church to change its irresponsible and unacceptable discourse.

In the year 2006, the Secretary of Education presented a methodological guide aimed at teachers of the I,II and III cycles (form first to ninth grade), in order to prepare them to teach sexual education and establish it as part of the process of the comprehensive education of the students. The guides approach sexuality from different angles, like awareness of the body, emotions, relationships, human and sexual rights; they were designed with the support of the United Nations Population Fund and the Global Fund under the framework of the project for the *“promotion of sexual and reproductive health with gender perspective in the basic curriculum”*.

At the time, the publication of the guides had extensive coverage in the media, not to praise the value of their content to improve the lives of the students, but on the contrary, to condemn them mercilessly and even demand a bonfire to burn them, just like in the times of Giordano Bruno.

Newspaper headlines like *“Evil texts to be taught in schools”* or *“Pornography industry behind the sex guides”* are a clear example of how the church and the media used their influence to stop the inclusion of the guides in the comprehensive education of students.

And they succeeded, because the distribution and use of the guides was banned until further notice... and three years later they are still banned.

31 El Salvador

Procuraduría para la Defensa de los Derechos Humanos

**Strengthening the protections for human Rights of people with HIV through the Creation and Operation of the Department of HIV and Human Rights for the Ombudsman for the Defense of Human Rights.**

**This submission is presented as a good practice that should be promoted in the region to protect people with HIV, to better respond to HIV, focusing on respect within the legal framework and Human Rights. Institutions must assume the principles of “Greater Involvement of people with HIV (MIPA in Spanish) now that the**

**Department of HIV and the Ombudsman for the Defense of Human Rights is headed by a Person with HIV, with extensive national and international experience in the Defense of Human Rights of People with HIV.**

The ombudsman for the Defense of Human Rights (PDDH in Spanish) of El Salvador - in its role as protector of Human Rights of the inhabitants of the Republic of El Salvador and assuming that HIV and AIDS has transcended the field of health as a situation with greater implications for human development; and assuming that an adequate national response cannot be developed if there is no promotion – respects and guarantees human rights in accordance with the needs of the country and with the goal of improving its constitutional mandate to insure the respect and guarantee for human rights.

Through its own initiative or in response to a complaint, it investigates cases of human rights violations, assists alleged victims and promotes judicial and administrative protections of human rights created after October 2010, by agreement of Attorney Oscar Humberto Luna of the Department of HIV and Human Rights. It responds to the enormous need for the opening of new spaces and the creation of the respective support structures for the strengthening of the human rights protections of a population facing serious judicial and institutional shortcomings in the state's performance in the defense and guarantees of these rights. In addition, there are the sensitive limitations and obstacles of a social and economic nature that violate their human dignity, many times even in a systematic manner and often anonymously.

An organic structure within the PDDH, dedicated to the protection of People with HIV, their families and close-ones, was necessary, as well as gradually building a focus on human rights in the terms of addressing and providing national responses to the epidemic. Also, part of the work has already begun in many National Human Rights institutions or regional Ombudsman Offices in the Central American region and other countries.

The establishment and operation of the Department has enabled the creation of institutional conditions to consolidate communication and relations with state entities and organized civil society and international cooperation, but also especially in positioning their actions for the plaintiff population, users of the services, right and freedoms of the subject that should be provided under the Office's constitutional and legal mandate.

The Department seeks to influence public policies regarding the linkages that exist between the HIV and AIDS issue and the paradigm of human development, meaning how the human development level of a society is a key factor in the expansion of HIV and AIDS and viceversa – how HIV and AIDS impacts the possibilities of human development.

Thus, thanks to external financing within the framework of an international effort to achieve appropriate national responses to the pandemic, resources are being managed for the initial operation, but the Department is already institutionalized. By year two, the responsibility for its operation will be covered by budget funds, and it already has the capacity and other required resources to process complaints, establish governmental and non-governmental ties, carry out its work and generate concrete products and results for the protection and promotion human rights related to HIV and AIDS, as well as reducing the associated stigma and discrimination.

**OBJECTIVES.**

**GENERAL OBJECTIVES.**

To have a dedicated institutional structure specialized in the protection and promotion of fundamental human rights and liberties of people with HIV and AIDS and to address the national and institutional response in the field, with a focus on rights and combating stigma and discrimination in El Salvador.

**SPECIFIC OBJECTIVES.**

1. Strengthening insitutional actions that contribute to the respect and guarantee of human rights for people with HIV and AIDS, their families and close-ones.

2. Contribute to the culture of complaint and defense of human rights in El Salvador, particularly for cases and violations related to HIV and AIDS.
3. Consolidate the existing networks and coordination to expand and strengthen more extensive efforts to address HIV and AIDS in the country as a human rights issue.
4. Develop a systematic system of awareness and skills of PDDH personnel in fulfilling its mandate and powers in relation to the observance of the fundamental rights and freedoms associated with HIV and AIDS.

**Achievements to date:**

Increase in the number of complaints. (Increase of 80%)

Facilitating the resolution of cases.

Working in close coordination with civil society.

Led by a person with HIV with extensive experience in the defense of human rights nationally and internationally.

**Goals and challenges.**

Increased coordination with state entities to support the defense of human rights, such as the attorney general of the Republic and the Ministry of Labor.

Increase its constitutional mandate toward private enterprise.

<b>32</b>	<b>Colombia</b>	<b>Santamaria Foundation and Representative for Colombia in the REDLATRANS</b>
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**Trans Women – Obstacles to Accessing Health Services – HIV and the Problem of Public Health**

**1. Principle Human Rights Violations Against TW**

**1.1 Homicide:**

According to the Trans Citizen Observatory (OCT in Spanish) of the Santamaria Foundation, there were 45 registered and denounced homicides against TW in Santiago de Cali between 2005 and March 2011, the great majority of whom were sex workers. This situation must be considered as a public health problem. To date, the processes put forth by the competent authorities do not demonstrate any significant advances. This situation of social violence is also accompanied by political violence, impunity and disregard towards our organization’s demands, selective enforcement of the law- in cases which implicate TW as perpetrators, the system is diligent and operational; in situations in which TW are victims, it is inefficient and lax.

Cases of human rights violations against TW are higher but are not registered due to the lack of funding that would permit full coverage of the city.

**1.2 Police abuse and impunity in these cases:**

Since 2005, 76 cases of police abuse against TW sex workers have been identified and reported. However, investigations have only been pursued in 10 of these cases. The Public Ministry (Attorney, Defense and Personnel)

is aware of the situation.

The OCT has also reported illegal registration and review practices for companions, particularly sex workers. There have also been cases of police forcefully taking blood samples to determine HIV state/diagnosis.

## **2. Principal Human Rights violations against TW in relation to HIV and health in general**

In health institutions, TW encounter various obstacles to accessing health services as a result of stigma and discrimination because of their gender identity. One of the principle factors that increases and “justifies” discrimination and stigma, is the pathologizing of trans identities (in DSM04 manuals and CIE-10) in which they are considered as “sick”, based on the categorization of our identities as gender identity disorder.

The pandemic is seriously affecting TW according to epidemiological studies in Argentina, Peru and Bolivia, However, there is not yet a serious and rigorous study that supports exact numbers in Colombia, nor have affirmative actions or resources been implemented to address the specific situation of the TW in Colombia.

### **2.1 Barriers to Universal Access**

Below are some key obstacles that affect the right of TW women to health in the universal access to prevention, promotion and treatment of HIV:

- Lack of projects, plans, programs and actions that acknowledge the reality of TW, or specific investigations and interventions.
- Lack of opportunities for advocacy on health issues with national authorities.
- High incidence of TW cases without social security.
- High cost of Elisa test, and in some cases, many performed without pre- and/or post.
- Elevated cost of confirmatory testing, denial of or obstacles to the test.
- Inadequate pre-test counseling resulting in that TW do not claim test results.
- Inadequate post-counseling, which results in that TV do not initiate their treatment in a timely manner, and sometimes the diagnosis leads to deep states of depression and suicide.
- Poor professional counseling about the course of treatment leads to delays in the process and decreased motivation of TW to continue or initiate universal access.
- Denial or delay in the delivery of ARV drugs, tests, treatments, specialist, etc. affecting the overall health of women.
- High treatment costs, ineffective red tape, etc.
- Lack of knowledge of specificity and necessities of TW in relation to adherence, medical treatments, etc.

The neglect of SF demands made to the State in health matters is concerning.

### **2.2 The absence of specific health protocols for TW**

Because of gender identity, TW require a specific health protocol. Body transformations require professionals to reduce the risk of poor formations and deaths as a result of operations performed without professional assistance.

View more information on this link:

<http://issuu.com/search?q=santamaria%20fundacion>

In accordance with the 20 cases of death of TW living with HIV in Santiago de Cali, documented by OCT from 2005 to 2010, the following causes of death were identified:

- **AIDS phase:** accounting for 60% of the cases, this type of death presents itself in the advanced stages of the infection represented by a considerable deterioration in health (physical and mental) of Trans Women. In most of these cases, the diagnosis was not known before hand since they did not attend a health center (access barriers), did not access timely treatment.
- **Opportunistic infection:** in 20% of the documented cases, this type of death occurs almost unexpectedly, a disease that attacks a defenseless organism by taking advantage of the weakened immune system which has been broken down by the virus, causing death.
- **Psychological effects:** mainly characterized by severe symptoms of depression, this type of death is a consequence of the negative emotional reaction to a positive diagnosis (in any stage.) The psychological effects even triggered suicide in 10% of the cases documented by OCT.
- **Denial of services:** whether in the case of an opportunistic sickness or an advanced stage of the infection (AIDS phase), timely care for Trans Women living with HIV is a determinant factor in saving their lives. The results showed that in 5% of the cases, TW women were denied services at health centers (because of their gender identity and/or their positive diagnosis), causing death.
- **Improper body transformations:** although it is not possible to confirm that the improper body transformation directly resulted in death, a strong relationship has been found between affectations introduced into the body and the response by HIV and the adherence of antiretroviral treatment. OCT findings determined that these were the circumstances in 5% of the reported cases.

### 3. Actions in the defense and protection of TW rights in Cali by the Santamaria Foundation

#### 3.1 Trans Citizen Observatory

This instrument enables us to highlight and enforce the rights of TW, provide counseling, and psychological support for victims and their families through the work of peers.

#### 3.2 Legal program

Promotes legal guidance, support and representation for TW and family members of Trans Victims, particularly in the case of human rights violations in Santiago de Cali as a city region.

#### 3.3. Political advocacy

1. To demonstrate the state of human rights violations against TW in Santiago de Cali and in the rest of the country through the Report of the TW Human Rights Citizens Observatory.
2. Provide a space for dialogue, mediation and confidence building between government authorities and the State, our social organization and the affected population, with the support of international rights and health organizations and the international community.
3. Provide the tools to our people to achieve self-determination, the defense of their rights and political advocacy, to achieve Full Citizenship for TW.
4. Demand commitments from the Colombian State in relation to respect and the guarantee of health rights for TW in our country and the search for concerted and consensual solutions between both parties.

Promote and participate in interagency, intersectoral, interdisciplinary and intergovernmental spaces where safeguards are established for defenders of health rights that are in line with agreements, covenants and other international instruments ratified by the Colombian State; and establish new routes for work agendas to achieve the objectives set forth in the framework of health rights and human development.

33 Peru

**Agora – Centro de Estudios para la Promoción y Defensa de los Derechos Fundamentales y Generacionales (Center for the Study of Promotion and Defense of Fundamental and Generational Rights)**

*As an expert in Human Rights and in my capacity as a social lawyer and consultant, I am developing a proposal from civil society for political advocacy on this topic. I am currently working on the National Program against Domestic and Sexual Violence of the Ministry of the Woman and Social Development (MIMDES in Spanish) to implement the following project proposal:*

**“COMPREHENSIVE CARE FOR WOMEN LIVING WITH HIV/AIDS, VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE**

**Rationale:** It has been shown that the subordination of women fuels the HIV/AIDS epidemic. HIV/AIDS infection may be associated with gender violence in a direct way through sexual violence, and indirectly as a result of women’s inability to negotiate condom use or the conditions under which sexual relations occur, among others.

Sexual violence is an important factor in the risk of HIV/AIDS infection. In agreement with the aforementioned, the problem of family violence inevitably leads to self-discrimination and self-exclusion by women and becomes a social risk factor that affects the right to health and a violence-free life for women living with HIV/AIDS. A study revealed that more than one in five women with HIV has suffered physical harm since receiving their diagnosis. Of these, nearly half reported that they felt that the physical aggression was a direct outcome of their HIV situation. Therefore, if they had never encountered domestic violence prior to diagnosis, it is possible that they did after discovering that they had HIV.

This proposal intends to provide an efficient answer, specific to the problem of the vulnerability of women who suffer domestic or sexual violence or find themselves at risk of suffering due to HIV/AIDS - taking into account the need to address the factors that increase the risk and vulnerability to this epidemic, such as poverty, gender inequality and social marginalization.

This proposal strengthens the State’s Female Emergency Centers (CEMs in Spanish), which provide care services to victims, given that the attendants are trained and aware of human rights violations of people living with HIV/AIDS, to diminish acts of discrimination in care-giving.

There needs to be a commitment at the highest political level to reduce the vulnerability of the women as people living with HIV/AIDS or at risk of infection, specifically as related to violence against them, resulting in better sanitary, education, legal and economic conditions.

Effective efforts should be made to prevent HIV/AIDS and provide comprehensive care to its victims, as well as viable policies oriented towards women affected by HIV/AIDS. These policies should be integrated into the existing national structures, as in the case of the National Program Against Domestic and Sexual Violence of MIMDES. It is the first intervention from the State targeting specialized care for WLWA victims of domestic and sexual violence. This experience would be used to detect the failures, limitations and regulatory voids to move towards a definition of policies that provide access to support and HIV services for these women. To date, there is no intervention designed in the country for these women.

This proposal falls within the provisions of national and international standards for Human Rights of women and HIV/AIDS.

**General objective:**

Guarantee the right of access to comprehensive care services for women living with HIV/AIDS of the San Camilo Home who suffer domestic and sexual violence, within the framework of provisions set forth in the National Plan Against Violence Towards Women 2009-2015.

**Specific Objectives:**

- Highlight the existing relationship between violence against women and its impact on HIV/AIDS and vice versa, to promote comprehensive public policies.
- Develop a “Providers in Action” Program for information, detection and referral of domestic and sexual violence cases of WLWHA victims and their family members.
- Bring awareness to the personnel of the Female Emergency Center about the impact of the HIV/AIDS epidemic and the human rights violations of people living with HIV/AIDS, to reduce the acts of discrimination in care giving.

**Planned activities seek the following results:**

Establish a study that demonstrates the existing relationship between violence against women and HIV/AIDS.

Establish a Program that prevents, detects and refers cases of WLWA victims of domestic or sexual violence.

Reduce the cases of TARV abandonment due to depression, which affects adherence to TARV, as a result of violence towards women.

Reduce the cases of self-exclusion by WLWA because of a feeling of helplessness in the face of ineffective institutional response to cases of domestic and sexual violence.

Achieve actions that implement national standards and international commitments on domestic violence and HIV/AIDS, to which the Peruvian nation is party.

Ensure institutions that provide WLWA victims of domestic and sexual violence with free legal support for the protection and defense of their rights.

Guarantee that the personnel of the CEMs has information that enables them to improve the quality of care provided to female victims of domestic and sexual violence, through dignified treatment free of discrimination.

34	Nicaragua	<b>Asociación Nicaragüense de Personas Positivas Luchando por la Vida ( ANICP +VIDA)</b> <b>(Association of Positive Nicaraguan People Fighting fo Life)</b>
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My name is X. I am a person who has been living with HIV since 1991. I was infected in the military service (during the war in Nicaragua) through a blood transfusion as I was wounded in action and unknowingly received blood from a companion infected with HIV. At that time, tests were not done to determine if blood was infected with HIV.

This year, I donated blood to the Nicaraguan Red Cross, and the doctor who attended me received me in a dimly

lit room and seated me at one end of a table and he on the other. I asked him for water and he gave me a disposable cup while he drank from a glass cup. He asked me if I was a pig or if I had frequented prostitutes or if I had tattoos or if I was a *cochonero* (terms that are not currently used). I immediately answered him no. As a doctor, he told me without any tact that I suffered from AIDS and that I had five years left to live.

In 1995, I worked for the Comptroller General of the Republic, and when the Collegiate Comptrollers realized that I was a man living with HIV, they called me to their office and told me that I was infecting the people who worked in the Comptroller's Office. They fired me that day without paying me any of the benefits to which I was entitled under the governing labor law, solely based on the fact that I am a man with HIV.

In December, 1996, I had a relapse and checked into the Manolo Morales Hospital. The doctor on duty, whose last name was Gomez, sat me down on a metal bed without a mattress and told me to wait because the doctor who would attend me was at lunch. He told me that he was afraid to attend a man with HIV because he could be infected. I had entered the hospital at 10 a.m. and was attended at 8 p.m., a ten-hour wait. The doctor who attended me put on two pairs of gloves, two pairs of pants and two shirts. When I asked him why he was standing so far from my bed, he told me that I had AIDS and that he did not like attending this type of person. I proceeded to call and inform nurse Hodgson, the nurse on duty, and she told me that she would attend me.

35 Honduras

Individual

My name is X. I am a transgender person, sex worker, human rights activist and work in primary, secondary and tertiary HIV infection in my country; issues which are very violated by the state and society itself, where there exists a great amount of discrimination against us because of our sexual identity, our work and for living with HIV in many cases.

We are a very vulnerable population and have therefore organized ourselves as an association of transgender and transsexual people. We seek to promote the defense of our human rights as the people we are and to promote health services that provide us with quality care, something that has been very difficult to achieve since the health centers, hospitals and comprehensive care centers for people with HIV are dominated by judgment and discrimination against people like us who have decided to live with a female identity in a male body.

If we are to mention cases of human rights violations of transgender people living with HIV, there are many cases of people who are now dead or who do not receive either adequate attention or the medicines for treatment. In 2009, a girl trans sex worker did not want to go to receive treatment, because when she had wanted to, she was turned-away by hmedical personnel at the hospital. She died the week of her first relapse.

This discrimination also exists in sex work, where people trying to make a living through the only means provided by the state and society experience violence on a daily basis. Sex work is a social imposition and not a job option since Honduras rejects and does not legally recognize transgender people. After the coup d'état in Honduras, 34 LGBTTT people were killed by clients and police. The cases remain filed away in the prosecution offices.

The case of Vicky, who was killed on June 28, 2009, is emblematic since, on this day, there were only police forces in the zone because there was a curfew and a state of siege. She was found the next day with various shots to the head and thorax and the bullet was from a police weapon. It took a long time to take her to the morgue because she was a trans person living with HIV. For this reason, the forensics did not perform an autopsy. Like this, there are many cases that should be presented in a regional report.

It is worth mentioning some of our participation in high-level HIV meetings.

Participation in international meetings such as the UN General Assembly in New York in 2008; participation in

Latin American and Caribbean HIV forums since 2005; participation in CONCASIDA Central since 2005; participation in the meetings of the OAS bodies since 2005.

Space won to represent our population as el Pais de Honduras que Coordina Mecanismo (Global Fund.)

Organizers of a national event, the first Honduras Transaction conference on universal human rights and universal access in 2008 and 2010, supported by the United Nations.

Our NGO collaborates in the preparation of national reports to reduce the level of transphobia, homophobia, lesbophobia in society and governments.

The contribution to the strengthening of universal access to services, especially social security, in promoting the rights of LGBTTT people to lower existing levels of transphobia.

Contributed to the preparation of the UNGASSS annual report, contributing information about the strengths and weaknesses of our country. In terms of health care access, some transgender, gay, bisexual, men that have sex with men suffer discrimination and unequal and inhuman treatment by medical personnel in medical centers, hospitals, centers for comprehensive care for people with HIV, etc.

The importance of the publication and the need to direct the administration of hormones and ARVs in the physical transition from male to female, as part of comprehensive care or treatment for transgender people.

36 Colombia

SENDEROS ASOCIACION MUTUAL

In Colombia, as in the rest of the world, in an attempt to control the HIV/AIDS epidemic, a study has been developed to determine the prevalence in the population and monitor its evolution. To date, data is very weak and there is still a lot of work to do in the region in this respect. To fully understand the HIV epidemic, it is necessary to have the information about people most vulnerable in the country and about the contributing behaviors. Previous studies have estimated that the Men who have Sex with Men (MSM) are among the most vulnerable groups in the population.

### **Rationale**

Several studies show the efforts that have been made to understand and monitor the epidemic in Colombia. The information collected suggests that the prevalence of HIV in the sexually active population will continue to grow over the next couple of years, without exceeding 1%, before it declines. A prevalence and behavioral study carried out in Bogota in 2000 showed a prevalence of 18% in the MSM population. (1) COLOMBIAN LEAGUE TO FIGHT AIDS, NATIONAL INSTITUTE OF HEALTH AND NMRCD. HIV prevalence and associated factors among MSM in the city of Bogota. Bogota, Colombia: Colombian League to Fight AIDS, 2000.

This project seeks to estimate the prevalence of HIV in MSM in six other capital cities in the country, with the support of the Ministry of Social Protection (MPS in Spanish), the National Health Institute (INS in Spanish), the United Nations Population Fund (UNFPA), the Pan American Health Organization (OPS), the World Health Organization (WHO), UNAIDS, the District Health Office of Bogota and the corresponding territorial entities.

The goal of the study is to generate information on the size of the collective, the magnitude, characteristics of the HIV epidemic in the 18-and-older MSM population and the associated sexual behaviors, that can be used to determine the advance of the disease.

Through this study, the Senderos Asociacion Mutual NGO was chosen to represent Civil Society in the city of Cali

and Oswaldo Rada selected through a City call to be the “promoter of the process” (public relations, peer work, liaison between civil society, agencies and places where men meet for sexual encounters in Cali and nearby cities.)

A dispute arose between the city’s LGTBI groups regarding this selection because a gay person living with HIV was going to be the “promoter of a project that sought to determine prevalence and provide information about HIV”, reflecting the stigma and discrimination related to HIV that continues to exist in LGTBI groups of the city. In addition, the question was raised about how I, as a person with motor disabilities, would be able to go up the stairs to the venue, to visit meeting sites, etc., which also reflects the discrimination and stigma against HIV-associated motor disabilities. The situation was resolved through a meeting with city activists in which an agreement was reached about the benefits that the project would generate for the city.

## Facts

During the project, an excellent work group was formed. It was interesting for the group to share directly with a person living with HIV, and the interaction with people visiting the venue and the information sharing among MSM peers was beneficial.

Almost 85% of the suggested sample group (350 people) was achieved with the possibility that within three weeks of completing the process, we would exceed these numbers. The process has been well received in the city, and promotional flyers and posters were used, as well as the dissemination of information via Internet (flyer examples in annex).

One August afternoon, a **HOMOPHOBIA ATTACK** took place when the project coordinator was alone at office headquarters. There had been a change in interviewers (two women and a gay man) and the promoter was in a meeting out of the office to raise awareness of the organization’s work.

The attack was violent, damaging the project’s network tables, monitoring tables; destroying material; stealing bonds that could be redeemed for cash; stealing exam materials; damaging walls and scrawling homophobic phrases. But, strangely enough, they did not take computers or furniture, clearly demonstrating that this was a homophobia attack, and the only thing they wanted was for us to leave the sector for being “fags” and speaking about HIV.

The upside is that the coordinator, although she was locked up for an extended period of time and threatened, was not physically abused but was told that we had “**until today to leave.**” (Photos of the attack and of some of the damage in annex.)

The situation was heavy, agonizing for everyone, and we left the project house that night as a group. We did not take public transportation since they could have been waiting for us at some corner, and we did not return to the headquarters after that night, fearing for our safety.

Institutions that supported the MPS and UNFPA projects from the outset were informed and instructed us as to the safety procedure to follow, not to disclose the situation to study participants, to leave headquarters and analyze whether or not to continue the process.

Another important fact is that neither a fellow pollster, who was openly gay, nor I, as a project promoter (gay living with HIV), was at headquarters. Who knows what might have happened to the attackers...had they seen two gay people. Surely, we would have been attacked. As I mentioned, as a person with motor disabilities, I would have been more vulnerable to the attack had I been there in that moment.

The decision was made to continue at other headquarters, but this interfered with the completion of the process, as we feared a new attack or that our new location would be discovered. Only people who had appointments prior to the incident were invited.

After 15 days, the process was shut down prior to completion since many appointments were canceled. Many people did not like the change of headquarters or the canceling and rescheduling of appointments. The work environment changed although we supposedly had security outside the house.

### **What happened after**

A report was filed **although, to date, there has been no response from the authorities**. No official comment was made to the city organizations, and we focused on other projects, returning to peer projects; HIV infection awareness; condom use and the subject of stigma and discrimination in MSM – with the support of UNFPA and the MPS.

We have been able to continue to work on the process but still live in fear of working openly in the city since there are still a lot of homophobic groups and the stigma and discrimination associated with HIV is still dormant.

### **What happens now**

We plan to continue the MSM work thanks to the upcoming global fund project to assist MSM, among other populations, but the disinterest shown by the authorities in human rights violations of people other than heterosexuals continues on a daily basis. Gay meeting places have been tagged with graffiti and threats. There is one group that has been most affected, the Trans girls of the city, where trans phobia is evident, in addition to the stigma and discrimination they already suffer. In relation to the gay and bisexual community, they continue to attend meeting places but with the internal stigma or the fear of being attacked or ridiculed by those who assumed they were heterosexual.

Although incidences of violence, harassment and murder against people who live with HIV and have a different sexual orientation than heterosexuality continue in Latin America, there is no real response from the state or a true public response to this situation.

37 Chile

Movimiento por la Diversidad Sexual (MUMS)

There have been a number of calls by the UN and the OAS which, after energetically rejecting acts of violence motivated by sexual orientation and gender identity, called upon member states to consider means to combat discrimination and to take the necessary measures, legal and administrative, to promote and assure the human rights of all people, without distinction.

However, Chile remains a country with profound inequality and discrimination, with a history founded in one-sided thinking, in the exclusion of differences, in the denial of our multiculturalism by the State and its political and economic elite. Fundamental human rights are not respected, much less those of lesbians, gays, bisexuals, trans persons. In addition, there are still doubts about the serious human rights violations that occurred during the dictatorship and during the democratic period that followed.

To date, no leader has received a sexual diversity movement to discuss these matters.

### **HIV/AIDS**

In Chile, the current law protects people's privacy, in testing as well as the records that refer to the subject.

However, the HIV epidemic continues to grow. More than 22,000 people have been infected by the virus, more than 6,000 have died and more than 10,000 are undergoing expensive and medically complicated treatment.

Real and effective prevention policies do not exist. According to the Finance Ministry's evaluation of the HIV program in the country, the budget for the Group Prevention project item fell by 50% between 2006 and 2009. Besides, Chile has one of the lowest levels of coverage in the world in HIV prevention material for the most affected and vulnerable groups (2%).

### **Curative therapies**

In an interview with *La Nación* in 2009, the College of Psychologists positively assessed "curative therapies" for homosexuality promoted by the Los Andes University as consistent with an actionable mission and vision. In addition, in 2010, the College of Psychologists again argued that these practices are part of academic freedom and did not condemn this violation of human dignity and human rights.

### **Law against discrimination**

The Anti-Discrimination draft law has shown little progress since its introduction to parliament in 2004. The current draft does not include gender identity among the conditions to be respected, nor does it create a permanent institution that is independent from the government, with its own financial resources to promote public policies and advise victims.

Chile is being sued in the Inter-American Court of Human Rights for the case of Karen Atala, a lesbian mother who was stripped of her daughter's tuition because of her sexual orientation. This shows how fragile the Chilean legislation is with regards to sexual diversity and discrimination in general.

### **Recognition of same-sex couples**

In Chile, the only valid and existing marriage is that between a man and a woman as set forth in article 102 of the country's Civil Code. In addition, there is a pending draft law in the Senate, promoted by the evangelical sector that would raise heterosexual marriage to the constitutional level, as a means to impede the advances of sexual diversity in achieving the recognition of legitimate rights and equality by law.

### **Gender identity**

In Chile, there is no specific regulation that enables name changes for trans people. In fact, there is no mention of the concept of "gender identity" in any Chilean law, standard or regulation.

The sexual reassignment process does not have State health coverage. In addition, trans people do not receive adequate care in the Public Health system, encountering discrimination and prejudices in many cases, from professionals from whom they seek help.

### **Morality and decency**

State and private security forces use Article 373 of the Penal Code to intimidate same-sex couples that display affection in public; as well trans people or sex workers, since this ambiguous article allows law enforcers to determine what is "an offense to morality and decency."

### **Age of sexual consent**

Article 365 of the Penal code, which refers to sodomy, was not repealed or modified. It currently exists to establish differences in the age of sexual autonomy. The age of sexual consent for heterosexuals is 14 years old, while it is 18 for homosexuals. This means that a 40-year-old man may have consensual sex with a 15-year-old girl, while a 19-year-old boy who has sexual relations with a 16-year-old boy can be arrested for sodomy.

## Dismissal by “company requirement”

Article 161 of the Labor Code allows companies to arbitrarily dismiss people, hiding discrimination against sexual orientation and/or gender identity behind the “company requirement.”

## Sexual education

Currently there is no sexual education policy in the country, and sexuality is approached exclusively from a biological standpoint. In addition, it should be noted that Chilean education is almost entirely privatized, and a religious and conservative religious ideology dominates a large part of it, which makes it difficult to address real and effective concepts related to these issues.

## Legal obstacles for a legal environment favorable to national responses to HIV and AIDS

- 1. The absence of mechanisms to access justice and the limited capacity of the judicial sector to adequately respond to the legal questions related to HIV:** the limited capacity and opportunities to access justice is the principal obstacle in achieving a response to HIV based rights in the country.

Access to justice to protect human rights is the way to protect people’s health, and it is crucial in the response to HIV. Although a large number of countries in the region have protective legal frameworks, the reality of discrimination persists because of the HIV positives, the sexual orientation or identity, gender, ethnicity or social class. The promotion and defense of the human rights of these groups are limited by obstacles that must be overcome in order for people living with or affected by HIV and vulnerable groups to exercise and protect their rights.

To improve access to justice, these populations need quality and accessible legal services. The experience has shown that legal services must be part of a rights-based response to HIV and a central element to guarantee protections against discrimination, obtain reparations for human rights violations and expand access to HIV prevention and treatment.

The services will empower the communities in the use of the law and the mechanisms provided, and help to overcome the existing gap between the written law and its effective application. In hostile legal environments (for example, where penal laws are applied in an inappropriate manner) quality legal services can achieve better results for their clients and communities to generate useful information for legal and political reforms.

The legal services related to HIV in developing countries and economies in transition continue to be largely *ad hoc*, limited coverage with variable quality. Aside from the successful cases of strategic litigation to combat discrimination and improve the access to prevention and treatment services, the existing legal services have a limited impact on the HIV epidemic. They need to be evaluated and applied on a larger scale.

**Response:** In Latin American, IDLO supports organizations from civil society in five countries to design and provide HIV-related legal services. These initiatives focus on improving access to justice through adequate models on the local level, which include community outreach, direct lines, capacity building for legal assistance, referral networks and professional support.

Recommendations:

- a. Strengthen and expand access to justice for people living with HIV and key populations by supporting quality and accessible legal services and capacity building to governmental and non-governmental institutions.
- b. In consultation with national and local authorities, develop an actual map of HIV-related legal services, the voids and needs to identify priority areas of support, in conformance with the local epidemics.
- c. Include cost proposals to strengthen and expand legal services related to HIV in the national AIDS plans and strategies.
- d. Include specific budget lines to strengthen and expand HIV-related legal services in the national AIDS budgets and/or in the budgets of national legal support programs.
- e. Develop the capacity of national actors (for example, Ministry of Health and Ministry of Justice, personnel of the National AIDS Program, members of the Coordinating mechanism of the country (MCP) of the Global Fund, of the United Nations and other agencies) to establish and program HIV-related legal services.
- f. Include the legal questions related to HIV in the main legal aid programs (for example, the Ombudsman, the Human Rights Ombudsman, among others).

**Other obstacles to a favorable legal environment for national responses to HIV and AIDS.**

**2. It is necessary to move forward with the adoption of the International Guidelines for Human Rights and HIV/AIDS and for the harmonization of legislation at the country level.**

Voids, limitations and obstacles persist in the application of the laws or in the definition of protective legal frameworks for human rights of PLWHA and key populations. It is particularly necessary to harmonize national legislation with International Guidelines established in relation to HIV. Colombia, Guatemala, Bolivia, Ecuador, Panama, Paraguay, Nicaragua, Dominican Republic, Venezuela, Peru, Argentina, Uruguay, Chile, need to review that which concerns: increasing awareness of judicial power on legal, ethical, and human rights questions related to HIV (First Guideline); the provision of services and procedural guarantees (Third Guideline); the penalization of deliberate transmission of HIV as a special crime with general offense application, include provisions for the prevention of HIV transmission among IDUs, and revise the response to HIV in the penitentiary system (Fourth Guideline); assure access to adequate legal processes and the revision of HIV policies in work areas (Fifth Guideline); guarantee legal aid services and expansion of awareness of legal questions and HIV (Seventh and Eighth Guidelines); generate and promote codes of conduct regarding issues surrounding HIV, equipped with procedures to implement and enforce these codes (Tenth Guideline).

Recommendation: (i) Work with regional legislators to strengthen their capacities and awareness of HIV-related issues and human rights; (ii) generate useful tools and evidence for legislators in formulating the laws.

**3. It is necessary to lower the cost of medicines and provide training in the flexibility of ADPIC use to expand and assure access to medicines.**

Problems in the purchasing, supply, distribution of medicines and the poor ability to negotiate better prices persist. With the goal that each of the countries in the region benefit from lower prices of medicines, it is necessary to provide training in the use of the provided flexibilities and safeguards in the Agreement on ADPIC, achieve intellectual property patents and a greater flexibility in obtaining licenses.

Recommendation: (i) provide training on the uses of the flexibilities and safeguards in the ADPIC (ii) address pharmaceutical patents from a public health perspective; (iii) develop guides oriented toward public health to

explore the distinct types of patent claims for pharmaceutical products; (iv) support the sharing of experience and best practices through horizontal and South-South cooperation.

**4. The protection and exercise of sexual and reproductive rights.** There are important voids in the inclusion of HIV in a comprehensive sexual and reproductive health agenda.

In the region, comprehensive sexual and reproductive care and the sexual rights of women with HIV present important violations in terms of: the absence of emergency contraception, of safe abortion options, of prophylaxis for post-HIV exposure, provision of female condoms, violation of the right to choose the number and frequency of children, denying enjoyment of a sexual life and the absence of attention for sexual violence. Comprehensive counseling for family planning is not offered as part of HIV care. Assisted reproduction and adoption for people with HIV are absent from the national HIV programs in countries such as Bolivia, Colombia, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Mexico.

Meanwhile, the providers of public health services have negative attitudes and discriminatory practices towards the exercise of sexual and reproductive rights of women with HIV. An investigation underway in Mexico found that violations occur on three levels: lack of information and verbal abuse, different and discriminatory treatment, and medical interventions that violate reproductive rights by omission (to reject changes in treatment) or commission (sterilization or forced abortion).

Furthermore, the application of the Regional Ministerial Declaration for Prevention through Education (2088) on sex education and access to different sexual and reproductive health care services for adolescents and youth has shown little progress in the region. And, the fight against gender-based violence and economic inequality affecting women, which places them in vulnerable condition and at greater risk of HIV infection, persist.

Recommendation: Adapt existing regulations and strengthen public policies and gender-sensitive legislation to prevent all forms of discrimination against women, promote and advocate for sexual and reproductive rights to be an inherent part of human rights.

#### **5. Protection against discrimination**

The stigma and discrimination associated with sexuality, gender, ethnicity and economic inequality - particularly targeting vulnerable groups such as MSM, sex workers, indigenous populations, LGBT, transsexuals and drug users – has negatively impacted the response to HIV. In particular, it limits access to information, prevention services and timely care. Meanwhile, hate-crimes, harassment and threats against the LGBT community and the impunity of these acts reveal the discrimination to which these populations are subjected.

Recommendations: (i) Create a mechanism to register, document and respond to cases of discrimination and human rights violations of people with HIV and vulnerable groups; (ii) make these programs sustainable, particularly for civil society organizations; (iii) confirm the commitment of governments to challenge discrimination as expressed in the law against discrimination; (iv) train and increase awareness in judicial officials.

#### **6. The criminalization of HIV infection**

Several countries in the region have regulations that require HIV tests for certain groups and for the processing of certain civil paperwork, in addition to policies that criminalize HIV infection and penalize activities such as sex work. Furthermore, the known cases of prosecution for exposure or transmission of HIV indicate that these processes are directed particularly against people belonging to marginalized groups, especially vulnerable to HIV infection such as sex workers and LGBT.

Recommendation: (i) to have updated information on cases of criminalization of exposure to or transmission of HIV; (ii) review and adjust national legislation for the Fourth HIV Guideline; increase awareness in and train legislators about HIV, Human Rights.

## 7. Lack of awareness about rights and of the legislation by people living with HIV and the principle affected populations

Various approaches to accessing justice in the region point out the commonality of PLWHA and key populations' limited knowledge of their rights, the laws and their function.

Response: IDLO supports local partners in working with PLWHA and the principle affected populations to further legal empowerment and human rights awareness.

Recommendations: To strengthen the legal awareness of people living with HIV and the affected communities. This should include specific information about local laws and policies, where to access legal services, in addition to general education about human rights.

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39 Panama

Mujeres con dignidad a vivir por panama

Good afternoon. My report is the following. I am a clandestine sex worker, born in Honduras, but I have been in Panama for 38 years and a sex worker from an early age. These are the cases that happen to me as a sex worker. The police pursue me everyday for being a sex worker. They catch me and spray pepper spray in my face. Three years ago, I was raped by police and was too scared to file a complaint. In another case, a police sergeant arrested me almost every day and one time hit me in the head in the patrol car until I was unconscious. The police sergeant, last name Lopes, told me that if I was dying, he could take me to the hospital. Thank god nothing serious happened to me, but I did file a complaint against him because what he did was too much. He didn't arrest all of the companions, just me. He was let go shortly thereafter.

I can tell you that in my life, I have to be a sex worker and have been raped and abused by police and clients, some clients even wanting to kill me. I have been left in the street naked, beaten, my money stolen by clients and even called an AIDS slut. My brothers look at me as if I was a strange animal and do not like me because I am a sex worker. I have even been mistreated by my partner who beats me when I do not bring money home.

Because of this, we have formed a group of women and call ourselves Women Living with Dignity for Panama (Mujeres con Dignidad a Vivir por Panama) so that our rights are not violated has human beings and because we

deserve respect. I am actual worker and the representative of Panama in the redtralsex.

Also, we are not given social health care in the clinics because we are clandestine. We are greatly discriminated against by the police and people who walk by us. I'm telling you that they throw gas in our faces. We experience horrible discrimination here. The clients even break the condoms. This is my report. Salutations to all of you and thanks on behalf of my sweet Ana.

40 Costa Rica

BITRANSNG Association

#### **FACTS.**

Yesterday, we went to the AIDS Control Department to pick up the famous condoms. And what was the surprise? That they treated us like beggars. My trans companion, Angie Gonzalez, accompanied me to get the condoms, and to our surprise, they only gave us 500 condoms for more than 300 people for the second month in a row. Angie, my companion, told the pharmacists that it was too little. The pharmacist responded by telling her to make due with that and so my companion told her that she would use them and would wash them in order to reuse them. The pharmacist said that she was sorry. I headed to Adriana, Doctor Terwes's secretary, to see how we could solution this situation, and to my surprise, she said:

You should be thankful that the department provides you with this care without social security, and I can do absolutely nothing.

I gathered up the condoms and told the pharmacist that I was taking them for my people, but I feel like a beggar more an more everyday.

#### **COMPLAINT.**

Doctor Rojas, Where is the commitment that you made to us months ago? Where is your earnestness? Where is your commitment to health? Where is the fulfillment of the general law on HIV/AIDS? According to the AIDS Control Department, at this time, there are no condoms, only for those who attend that center. Where do the NGOs stand that truly fight for the eradication of STDs/HIV/AIDS? How long are you going to ignore us? How long will it take until you put homophobia and transphobia aside and really take an interest in this population that is so discriminated against and ignored?

#### **FACT NUMBER TWO**

Last week, a trans named X arrived to the AIDS Control Department with a serious health problem. She only had syphilis, active herpes, HIV/AIDS. This patient needed an exam to determine whether she was allergic to penicillin, but what is surprising is that the equipment to perform the test had been broken for over six months. She was referred to the San Juan de Dios for the test, but because she did not have social security, she was not attended and, to date, has not received adequate health care.

#### **COMPLAINT.**

Doctor Rojas, Doctor Terwes,

What is going on? Where is the right to health? Where is your commitment to health? Doctor Terwes, you arrive to CONSIDA with a report from your department that states that everything is fine. Please, if there is somebody violating human rights in this country, it is your department. If I could have some hierarchical power, I would have asked for you to resign a long time ago. Or why doe your consciences not tell you to resign? You would have done

so for the sake of the country. People like you are apparently friends of diseases but do almost nothing to combat them.

For this reason, I am calling for the attention of NGOs that are supposed to ensure health and human rights to do something about this situation; that they stop fearing a state that is sicker each day, with some officials killing the issue by ignoring it. What an International Homophobia Day. Let's denounce what these officials who call themselves soldiers of health have done

Good day, I ask for all of your solidarity and that this message might be sent to all people with a social conscience.

Without anything further, I leave you respectfully.

41 Costa Rica

ASOVIHSIDA

**Relevant aspects of the General Law No. 7771 on HIV/AIDS and Regulation to the General Law on HIV/AIDS No. 27894-S, in the context of Costa Rica.**

**Criminalization (Article 51 and Article 38 of the Regulation):**

Law No. 7771 provides for punishment with imprisonment for people with HIV who, knowing they are infected, have sex with another person without informing that person (Article 51); this article is derived from Article 262 and 81 of another law of the penal code that has to do with infectious diseases, which is very general to the context of HIV, and it does not specify in what circumstances and violates the individual right to confidentiality (Article 8) and the right to the full exercise of their sexual life.

This article is much more coerced in the case of vulnerable populations such as inmates with HIV in a prison environment, where sex between men is common practice but banned in the prison law. In this situation, they must protect their diagnosis but also there is a need to live their sexual life.

**CONASIDA (articles 1,2,3,4 and 5 of the regulation):**

The approval of the Regulation to the General Law on HIV/AIDS makes official the establishment of the National Council for Integral HIV/AIDS Care, CONASIDA, as the governing agency in charge of national policies in this area, which includes representation of non-governmental organizations and people living with HIV. However, the Council has not managed to consolidate its role. Since its inception it has been a weak agency in the response to HIV in the country. It has been proposed to establish a technical secretariat, to ensure the operations and commitments, in order to speed up processes. This initiative has not yet been developed.

**Prevention (articles 30, 31 and 32):**

The development of sex education programs implemented by the State has faced serious obstacles, mainly from the Catholic Church, who questioned the content of the programs. The pedagogy of sexuality continues to be focused only on reproductive matters and with a clear heterocentric focus. Thus, the Catholic dogma rejects condom use as it implies the exercise of a non-procreative sex.

There are population groups who are marginalized by the preventive actions of the State: gay men and lesbians, sex workers, inmates, the elderly, men and women with disabilities and migrants, among others. This is due both to prejudice and lack of a comprehensive view of the problem.

**Care and access to antiretroviral treatment (articles, 4,7,8 and 33):**

The HIV care model of the State is characterized by a biomedical approach that does not account for the psychosocial care of the patient, family and community. Although there exist a peer program implemented by ASOVIHSIDA, its coverage is poor. HIV has not been considered a national priority and the approach by state institutions has been uncoordinated and fragmented.

Although the Costa Rican Social Security Fund (CCSS) provides antiretroviral therapy to people with HIV, it faces the problem of adherence to therapy by patients because it is limited to drug indication (schedule, dosage...), and lack a comprehensive approach, in addition to drug shortage situations.

People with HIV live in a permanent state of social and professional discrimination even though this is banned by the AIDS Law and other legal instruments. Further, many discrimination events are not reported and there is no database to reflect these situations. The Ombudsman's Office has followed up only very isolated cases.

**Other comments:**

NGOs do not have the resources necessary to ensure that their actions reach all these groups nationwide. This situation is even more critical because Costa Rica is a low-priority country for international agencies and their development programs.

Whereas International aid funds are dwindling, the State has failed to achieve its responsibility beyond the paper, with regard to HIV. This results in weakened efforts and progress in the fields of Health and Welfare, lack of motivation at the level of civil society and lack of leadership from people with HIV.

There is a shortfall in epidemiological, clinical, and psychosocial research of real impact on the economy of the country, which prevents the establishment of an objective diagnosis of the reality of HIV in Costa Rica.

42

Nicaragua

Individual

According to a UNAIDS report (2007), children who are victims of violence of any kind are more likely to contract HIV. The report also notes that sexual violence is not exclusive to women and, in particular, children suffering from trauma resulting from the aggression are more vulnerable to sexual infection.

Children are two to four times more likely to suffer the consequences of the virus due to social, cultural and economic factors. Low social status, lack of formal sex education in schools, and extreme poverty put children at risk of sexual exploitation and abuse, making this population more vulnerable. These forms of violence against children increase their vulnerability to HIV and reduce capacity for development and growth to very low levels.

Other risk factors include: violence in the community, in the streets, homes, schools, in the places where they are victims of child labor as well as the child care system. This means that violence against children is present in almost all scenarios, and linked to sexual abuse.

Annual figures for Nicaragua provided by specialized organizations show a rise in the pandemic. This is the reason why organizations such as **CEPRESI, XOCHIQETZAL, IXCHEN, SÍ MUJER, PUNTOS DE ENCUENTRO, DOS GENERACIONES AND SEXUAL DIVERSITY GROUPS** have considered recommending to the Parliament an amendment to the Law on the Promotion, Protection and Defense of Human Rights in the context of AIDS, as it

has been discovered that it exhibits gaps and that various sectors including children are not taken into account.

UNICEF's United Population Fund\* says that more than one million children are infected with HIV every day during their mother's pregnancy, labor or delivery, or due to breastfeeding. Latin America exhibits high rates of violence against children. The same source notes that 6 million children and adolescents are victims of severe assaults, and many are killed by their own family.

The media are a very important actor to promote and disseminate compliance with and enforcement of the rights of children and adolescents. Achieving these objectives is an arduous task that requires new strategies to promote a different treatment of the violence against children, adolescents, and women. As researcher Paulo Pinheiro points out ***"Violence may also be associated with the mass media and new information and communication technologies."*** All around the world the challenge is to get mass and alternative media addressing the issue of violence with a human rights perspective and not victimizing or reinforcing stigmas.

Indeed, efforts have been made in Central America to promote changes of attitude towards children and women and HIV/AIDS among journalists and media professionals. As an example, the Dos Generaciones Center, Plan Nicaragua, Save the Children and UNICEF have spent several years developing the Higher Diploma in Communication and Children's Rights. This initiative aims to raise awareness in addressing topics related to HIV, violence and gender. One of the gaps in the media concerns a lack of understanding of the causes of the pandemic. In many cases, the information provided is biased or incomplete, causing misinformation on these issues.

Children and adolescents with HIV are increasingly discriminated. This makes it urgent for journalists to assume their role as change agents committed to promoting a new and more human approach to different issues, avoiding the use of derogatory terms that encourage mass discrimination against minorities, including children, adolescents and women.

In legal terms, there is a reference framework that recognizes children and adolescents as rights holders. The Code of Children and Adolescents, the Act on the Promotion, Protection and Defense of Human Rights in the context of AIDS (238) and Nicaragua's Political Constitution protect the rights of this population segment and address some of these issues from rights-based approach and promote research to move public opinion on these issues.

Also, Book III, Article 33, of the Code of Childhood and Adolescence states that: "All children and adolescents are entitled to enjoy the highest attainable standard of physical and mental health, education, leisure, recreation, social security and services for the treatment of illness and rehabilitation of health. The State shall guarantee access taking into account the legal rights and duties of the family in charge."

For the reasons mentioned above, revision of health care for child victims of sexual abuse and consequently affected by STIs and HIV should be carried out, because in most cases they are poor, or require special attention and high-cost treatment (antiretroviral application), in addition to the emotional and financial implications of any judicial process after filing the complaint. Many times children are threatened and silenced by them.

***"The problem of violence and the evidentiary process experienced by girls, boys, adolescents and women, are developed in conditions of inequality, insecurity, victimization and poor access to justice" (Assessment / implications of the penal code, sexual violence, Dos Generaciones)***

In fact, the country still does not have specialized policies for a prompt solution to the issues shown year after year by specialized statistics. The little progress in that area includes the approval of Law 238, which led to the creating of CONISIDA, and groups that have contributed to the response such as ASONVIHSIDA and ICDW, who

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\* Translator's note: "El Fondo de Poblaciones Unidas de Unicef", in the original. This may refer to UNICEF (United Nations Children's Fund) or UNFPA (United Nations Population Fund).

have contributed their time and enthusiasm so that people have realistic and objective as well as scientific information.

For this reason, it is urgent to demand special protection for minors, who have been made invisible in public policy as a consequence of discrimination and social injustice, as HIV affects their overall development and efforts should not only be aimed at prevention but also at protection.

Awareness raising and advocacy must continue. There are still efforts to make to ensure that children and adolescents have access to HIV comprehensive health care. However, it is said that things change when our attitude changes. Therefore, we should continue working until our governments (and specially ours, Nicaragua) makes medical attention for these people a reality, including antiretroviral treatment. Political will is essential for an effective prevention of AIDS.

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43 Dominican Republic

Individual

## DISRESPECTS FOR THE LAW ON AIDS 55-93 IN THE DOMINICAN REPUBLIC

### BACKGROUND

As a result of the spread of the pandemic of HIV and AIDS, the Dominican Republic passes in 1993 Law No. 55-93. According to results of a research conducted by experts in 2008<sup>1</sup>, this law is based on advanced principles of bioethics and is a mechanism against stigma and discrimination, as it condemns any such practices at the workplace, health system, and other contexts disrespect to the human rights of citizens is frequent, both in terms of HIV status and gender. This law also establishes specific penalties for various violations in different contexts.

In turn, the Presidential AIDS Council (COPRESIDA) was created by decree in 2001 to bring together all organizations, public and private, working in response to the pandemic. COPRESIDA made multiple interagency agreements with the different sectors that were likely to contribute to an effective response to the disease. Agreements were made with employers' organizations, unions, police, the judiciary and civil society organizations, among others. Many of these agreements are still valid, but some are not worth the paper they're written on, as changes in the institutions' boards, mainly in the case of State institutions, make it necessary to restart the process of documentation of the new authorities on existing agreements and to sensitize them in those matters. One of the most important agreements was quadripartite agreement between the Employer's Confederation, the country's main unions, the State Secretariat of Labor (now Ministry of Labor) and COPRESIDA. This agreement is considered an important step in respect to Law 55-93 in the labor sector as it involves key stakeholders, to make everyone aware of the terms of the law and commit to it.

Since 2003, advocacy efforts have encouraged an amendment to Law 55-93. In April 2011, after the approval of the Senate, the Chamber of Deputies approved a package of amendments that repeal Law 55-93 and replace it by a new one that builds on the previous. The new law creates the COVIHSA (National Council for HIV and AIDS) and repeals the Decree of the Presidential Council on AIDS. This amendment has not yet entered into force

<sup>1</sup> Ciencia y Sociedad, Volumen XXXIII, pp 610-625, INTEC. 2008

because it has not been promulgated by the executive. The advances of the new law include higher penalties for offenders and wider participation of people living with HIV and AIDS, as well as sexual diversity organizations, in the COVIHSIDA.

## THE PROBLEM

Whereas we have made great progress in legislation, the same cannot be said about respect for the law. Both civil society and health organizations make real efforts to make the law respected, especially in regard to anti-stigma and anti-discrimination issues. However, the authorities responsible for enforcing the law are not committed enough to their responsibility. A report by Amnesty International (May, 2006)<sup>2</sup> states:

“The Caribbean has the second highest HIV/AIDS prevalence rate after sub-Saharan Africa. Despite national universal treatment programmes for HIV/AIDS in the Dominican Republic and Guyana many people lack access to HIV/AIDS related medication and health services. In the Dominican Republic the government acknowledges that nearly 70 per cent of all people requiring antiretroviral treatment are not receiving it, despite a grant from the Global Fund to Fight AIDS, TB and Malaria. Amnesty International encountered many cases of people unaware that treatment existed, or unable to access treatment because of the lack of essential health services in many areas.”

Also, this report sets other human rights violations, which are also violations of law:

- “Condoms are an essential tool in preventing new HIV infections, however in both Guyana and the Dominican Republic these are not readily and easily available since both religious groups and US donors have insisted on a strategy of abstinence and fidelity.”
- “Women are often more vulnerable to human rights abuses relating to HIV/AIDS, including sexual violence. In the Dominican Republic and Guyana, Amnesty International met several women that had been infected by a long-term partner or husband to whom they had been faithful.”
- “The right to privacy and confidentiality is insufficiently protected in the Dominican Republic and Guyana, but is vital to ensure that more people come forward to test for HIV and receive HIV/AIDS related treatment and care. Amnesty International’s report discusses a number of cases where confidentiality of a patient’s HIV status was not properly protected and the different repercussions that had, including dismissal from employment, on the basis of a person’s HIV status.”

The undersigned, as clinical psychologist, has had revelations from people who have applied for a job and have been tested for HIV to be eligible, among others. Some people assume that they have not been accepted by their HIV status. But there are also cases of people who have been dismissed when their employers knew about their HIV status, even when these people were fully performing their duties.

As in other Latin American countries, trans and gay people are the ones bearing the brunt of stigma and discrimination because their gender condition is more easily identifiable, and because of cultural prejudices still to be overcome, and they are automatically rejected. The lack of access to job opportunities on an equal footing is one primary cause driving these people into prostitution, drugs and other criminal activities, which then makes them more prone to stigma and discrimination.

In many Latin American countries exist the constitutional figure of the Ombudsman, a resource usable by the groups whose civil rights have been affected. In the case of the Dominican Republic, although the figure is

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<sup>2</sup> “¡No me avergüenzo!”: El VIH/sida y los derechos humanos en la República Dominicana y Guyana (resumen), publicado por Amnistía Internacional el 31 de mayo de 2006.

contained in the constitution, no one was ever appointed to take office, let alone have the resources for its operation been specified and provided. Therefore, adding this to the authorities' negligence in their responsibilities to enforce the law, vulnerable groups are virtually helpless and this constitutes a weakness of the country's response to the pandemic.

## CONCLUSION

From the facts described above, it follows that it is not enough to have well-structured laws that account for all types of stigma and discrimination against vulnerable groups and people living with HIV. We must also address concrete actions to put pressure on the authorities to achieve law enforcement in all its aspects. These pressures must come mainly from civil society organizations, but with the support of regional and international organizations.

44 Guatemala

PROYECTO UNIDOS –ASI-

### An experience of daily work to change a tabooed society

My experience as a project coordinator for MSM is enriching as the violation of human rights in the GLBT community is common practice in Guatemala. I have given support to cases such related to the violation of the right to education for the simple fact of being homosexual. This was the case of a 16-year-old boy who was harassed by the authorities of educational establishment to change his habits, as they were not acceptable in their premises.

However, it is quite rewarding to see how public schools that would formerly deny access to education to non-heterosexual students have now changed their internal policies. In particular, this is the case of one public school, which was denounced for denying the right to education to that person. The case was monitored by the human rights attorney, which now continues to monitor these types of entities.

Also, it is worrying the way we are denied the right to quality public health. Health centers in Guatemala still lack staff adequately trained to serve different population groups. Different complaints were filed to that concern, and we managed to remove from office the people that were hindering the fulfillment of our right to quality health care services and, most importantly, we manage sensitize ourselves many health centers.

Our goal was to encourage changes. We believe that homophobia in our country is a major concern but the project has achieved much progress in this regard. It has also provided support when our users have been harassed in their neighborhoods because of their identity. Indeed, many are threatened and often forced to leave their homes, neighborhoods and/or provinces.

We have taken legal action to respond to the needs of these people, and we have followed policy-making processes for benefit of youth and GLBT people.

There is still a long way to go, but every day we are given the opportunity and trust to support and participate in the ongoing change occurring in Guatemala.

45 Honduras

Individual

Honduras has many laws, but some of them are not shared with citizens and remain unknown to the general

public. In particular, I will mention some laws that criminalize people living with HIV and AIDS.

- Article 180 of the Penal Code provides: Whoever willfully propagates a dangerous disease or causes an epidemic through the dissemination of pathogens, shall be punished by imprisonment for three to six years.

Although it does not specifically apply to people living with HIV/AIDS, it can be interpreted that in the case of a person with HIV attempt intentional attacks with needles infected with human immunodeficiency virus (HIV) in public places can be punished with imprisonment for three to six years.

Considering that this law criminalizes HIV transmission, it is not effective in stopping the epidemic and is causing discrimination and silence among PLWHA, mostly women, that are further victimized.

- Honduras has a Special Law on HIV/AIDS that entered into force in November 1999. While this Act has helped improve the quality of life of people living with HIV/AIDS, it also criminalizes people living with HIV/AIDS, since in its Article 79 states: The intention to adopt by a couple, can not be resolved favorably if both partners are infected with HIV or AIDS, due to the short period of life remaining for both, so that adoption does not make sense.

This is a clearly case of criminalization of the people with HIV and it condemns us to death, without considering that the death of any person is unpredictable.

The Special Law on HIV and AIDS provides access to comprehensive health care for people living with HIV and AIDS, but the fact that the Government of Honduras does not have HIV policies hinders such access, as the State so far failed to provide HIV patients with rescue therapy when they are resistant to the antiretroviral drugs that are currently provided by the Secretary of Health, thereby preventing the full access guaranteed by law guarantees to all patients living with HIV and AIDS.

Our organization has one lawyer who deals with cases of violence and discrimination against girls living with HIV, who is followed up by our technical team.

Although some cases are resolved favorably, most of the times our rights are violated because we are a very vulnerable population.

46

Paraguay

**LUCHA. Libertad y Unión de Choferes en Acción.[Freedom and Union of Drivers in Action]  
(Federation of Unions of Transport Workers)**

In Paraguay, a particularly discriminatory environment based on gender, sexual orientation, poverty, unionism or health, added to the fact that we did not have adequate legislation to the reality of a concentrated and growing AIDS epidemic. The former law was directly favored discrimination and was rejected by a wide spectrum of human rights organizations, especially those involved in the response to the epidemic.

This prompted the mobilization of leaders and organizations from different sectors, to develop an amendment document and after broad national consensus draft a bill that was finally submitted to Congress, passed and enacted in December 2009. The new law, Act No. 3940/09, which was created and driven by effective community participation, “establishes rights, obligations and preventive measures with regard to the effects produced by the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)”.

Since its enactment three major challenges were identified: 1) disseminating it widely among enforcement authorities and directly affected population; 2) informing and raise awareness of its scope to the general population; 3) preparing regulations and creating the mechanisms for implementing administrative, preventive and punitive measures towards universal access.

This applies equally to the work sector that relates to the law. Articles 20 and 21 address the scope. The former establishes the commitment to the creation and implementation of policies on HIV in the workplace and provides protection for affected workers by the country's social security system. The latter urges to avoid or cease covert and overt harassment to worker with actual or suspected HIV, and aims to protect access to employment for people living with HIV, rejecting the implementation of unfounded HIV testing.

The two articles establish responsibilities for both national authorities and with business associations and trade unions, so the latter facilitate the necessary resources for law enforcement to their members. Unions, in turn, must manage realities with the precarious tools at our disposal, but confident that a strengthened Social Dialogue can progress quickly and solidly. However, although the impact of the epidemic in the workplace is not a minor issue, we must reconcile agendas and coordinate resources and efforts to make a positive change in a very bad time for the field of work<sup>1</sup>, not forgetting Paraguay's situation with regard to compliance with ILO standards, including Recommendation 200/2010, "Recommendation on HIV/AIDS and the world of work."

There has been progress towards the signing of a Tripartite Declaration of Commitment on HIV/AIDS in the transport sector, and we are confident that before the end of 2011 we will have an indispensable tool based on national and international standards: A HIV/AIDS WORKPLACE POLICY for the transport sector. It will be justice.

47 Uruguay

Secretaría Nacional de Drogas

The UN Summit on the Millennium Development Goals concluded with the adoption of a global action plan to achieve the eight anti-poverty goals by their 2015 target date and the announcement of major new commitments for women's and children's health and other initiatives against poverty, hunger and disease. 2

"MDG 3: Promote gender equality and empower women

"MDG 6: Combat HIV/AIDS, malaria and other diseases

Also, the World Health Organization reports that more than half of the world's population is below the age of 25, and four out of five young people live in developing countries. Adolescents and young people constituted around 30% of the total population of Latin America and the Caribbean, according to various international reports. Of this percentage, it is estimated that 21% of the population aged 10 to 19 lives in Latin America and the Caribbean. The studies mentioned that already in 2000, 80% of the population between 10 and 24 in the Region lives in urban areas. One of the most important findings of these international studies relates to the living conditions of adolescents and youth. It was already estimated that in 2000 poverty would affect 56% of children and adolescents in our region. Our country is no stranger to this reality, as it went through a major economic crisis, which led to increased poverty and number of children living below the poverty line. As studies by National Institute of Statistics show, these children's households live in conditions of significant socio-economic vulnerability, difficult access to employment and poor access to health and social services. These increasingly adverse conditions are the threshold of adolescent and youth development deficit, characterized by the lack of opportunities in all areas.

Poverty is concentrated in the youngest generations of our country, and so is the greater degree of social vulnerability –"the infantilization of poverty," as cited in the 2005 Report of the Observatory for the Rights of Children and Adolescents in Uruguay.

<sup>1</sup> Paraguay should intensify efforts to ensure compliance with ILO Conventions on core labor standards, 2011. CSI-ITUC report <http://www.ituc-csi.org/paraguay-debe-redoblar-esfuerzos.html?lang=es>

<sup>2</sup> Bajado de: <http://www.un.org/spanish/millenniumgoals/> Mayol 2011.

To a large extent, behaviors learned during the second decade of life have consequences for the future of people and society, even if they only manifest in the adult stage of life. Concious of this, the World Health Organization estimates that 70% of all premature deaths among adults are the result of behaviours that began during adolescence. Living conditions play a major role in the determinants of population health, as well as population education, social mobilization and the establishment of policies that promote and ensure people's welfare in healthy environments. Taking as example the control of smoking/nicotine poisoning and secondhand smoke exposure in adolescents, our country has been progressively implementing different policies. However, quality and extensive data regarding other aspects of young people's health in Uruguay is not available. Despite these shortcomings, the Ministry of Public Health has prioritized the holistic human development approach proposed by the Pan American Health Organization –Health Promotion– as the privileged strategy. It also endorses the arguments and conditions that mark the Convention on the Rights of the Child for the basic protection of their rights.

**SND' s Demand Reduction Area-** Reducing demand for drugs (legal and illegal) means to delay and prevent the onset of drug use, early intervention in the process of occasional or non-dependent use, and treat the negative effects on consumer health and the social consequences of drug dependence through treatment and rehabilitation programs.

**SND priority:** preventing problematic drug use *in the community* and *promoting the commitment of its members, citizen participation and mobilization* around the issue through the following objectives:

**CONTRIBUTIONS OF THE GENDER SECRETARY.** The world today is undergoing rapid changes that exert a strong influence both in the process of socialization and learning of human beings and in the distribution of tasks and powers. This means that boys, girls, men and women are all vulnerable to the influence of these changes on their lifestyles. Gender-based roles and norms, stereotyping, distribution of jobs and pay-discrimination, also impact on the control over and access to social resources. They influence how people become "women" and "men" and their respective welfare. (Importance of recognizing gender issues and patterns and its influence on the welfare of people. Differences between the concepts of sex and gender, gender equality; the importance of gender equity to build healthier communities). From the earliest times (pregnancy and birth) each person develops differently according to their biological sex; however, conditions that provoke negative discrimination between them are avoidable. The rigid and constant attribution of certain "colors", "games", "clothing" and "learning" based on gender, can affect the healthy development of human beings and even their future mental health.

Men, who were traditionally awarded most or all of the responsibilities in the "public spheres" of society, are now processing a time of change. In the words of Jean Piaget, it is necessary to "assimilate and balance" these new social processes of joining new social roles for which they have not been sufficiently prepared by society.

Women, both young and adult, are also going through the same changes, with similar vulnerabilities, but conversely, they have to make their way, enter worlds that were previously exclusive for men, and, similarly, they are not adequately prepared to incorporate as quickly as demanded by these opportunities. Women are expected to respond to new roles and models, that did not exist before, as mothers and grandmothers performed totally different functions in a totally different world. There have been left on their own, and many times they have to create their models for themselves, but also coexist with former female models, which are still present and many are still valid.

It is crucial that the gender perspective is present across in the daily work in all spheres of education, whether in dealing with formal or recreational content or sports. It is important to consider:

- The importance acknowledging gender issues and patterns of gender and their influence on the welfare of people.

Differences between the concepts of sex and gender: Sex: biological and physiological characteristics that distinguish men and women, for example, reproductive organs, chromosomes, hormones. Gender: roles, relationships, responsibilities, values, attitudes and forms of socially constructed power attributed to women and men, boys and girls, for example, men are macho, women are the "weaker sex". (WHO, "Gender Mainstreaming for Health Managers: A Practical Approach" WHO - PAHO.)

- Importance of gender equity to build healthier communities.
- Reflect on the gender norms and roles and how they affect us. Rules correspond to societal expectations regarding acceptable attitudes and behaviors of men and women, boys and girls. Roles: for example, productive, reproductive and community management.
- Gender equality. Men and women, girls and boys have equal opportunities in access to social resources and control, as well as equal access to education, health services and policies. Men and women have equal opportunities to be healthy, contribute to health development and benefit from the results.
- Gender equity means fairness in the distribution of power and social resources according to different needs of men and women, boys and girls. Eliminate barriers that impede access to education, health services and policies.
- To promote the systematic collection of data on HIV and female adolescents and their social determinants, broken down by age, sex, ethnicity and socioeconomic status. 2. To ensure that adolescents with STI/HIV have access to comprehensive health services and health education, counseling, access to medicines and support for treatment adherence. 3. To promote the practice of voluntary counseling and testing in adolescents and young people, particularly key vulnerable young people and at greater risk to HIV/AIDS and provide care services and related counseling.”<sup>3</sup>

Other international contributions include the proposal of the Millennium Development Goals in the text: "Municipalities, Cities and Communities" (WHO-PAHO), which is relevant to the SND, in terms of the central role given to Decentralization and Prevention and Community Treatment Devices), with 8 global goals to be promoted at community level. Thirdly, "Promoting gender equality and empower women." This target was prioritized due to the crucial role of women in the achievement of all MDGs. To allow communities to have women's contributions, they must first develop and grow healthily in their communities.

This includes gender-specific research and implementation of prevention programs aimed at boys and girls, addressing the factors of gender-based violence. They should also contribute to make these girls develop their full potential as rights-holders, so that in the course of their future life these women have equal access to the labor market, "empower" their own lives (to be autonomous, educated, and able to contribute to their communities from their "unique role of caretakers"), know how to protect themselves from violence and find help, among others. This will allow communities to have educated, proactive, participatory women that contribute to poverty eradication, promotion of education in their communities, promoting the creation of a healthy and sustainable community development.

In order to achieve these objectives it is necessary to probe deeper into our girls "health" status, especially in the process of gender-based violence situations.

There are 2 main areas of impact: a) Deadly b) directly or indirectly deadly

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<sup>3</sup> Empoderamiento de mujeres adolescentes. Un proceso clave para lograr los Objetivos de Desarrollo del Milenio. Organización Panamericana de la Salud Washington, D.C: OPS, 2009. Tercera revisión.

## A) Deadly

1) Physical health. Among the first resources of girls and women to alleviate the consequences of violence against women is drug abuse (legal and illegal). In their role as potential mothers this also affects other members of the community.

2) Mental health, violence against girls and women affect their mental health, featuring at global and national level, girls' greater vulnerability to mental health problems, such as: Depression, sadness, loneliness, and fear.

## B) Directly or indirectly deadly

Suicide (one of the most common mechanisms for women is psychoactive drugs overdose); infant mortality or disability (drug abuse also plays an important role here); HIV/AIDS, drug abuse and risky behaviors such unprotected sex.

The relationship between problematic drug use and gender-based violence can be established from the outset. Sometimes drugs act as a facilitator in the "aggressor", or in the woman making her less aware and more vulnerable. Also in the process of alleviating physical (pain) and mental health problems (fear, depression, etc.) in the aftermath of violence.

Last but not least, how drug abuse affects the healthy development of youth, and therefore the development and sustainability of a Healthy Community.

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Costa Rica

Individual

My name is X. I am originally from Costa Rica. I want to address what happened in a State institution which hired me and fired me after only one month. I was discriminated against, and my rights were violated because I am HIV positive.

On April 14, 2009, I started working as an assistant for neurology patients at the National Rehabilitation Centre (CENARE), a medical institution that belongs to the Social Security Fund (CCSS). On Friday May 15, 2009, I was called for a pre-employment assessment interview with Dr. Nuria Alvarado, who provided me with documents which required me to have the following tests performed:

1 – Spine X-ray;

2 - Hepatitis.

3 – Stools and urine.

4 - HIV and Syphilis.

I was astonished to hear that I was sent for an HIV test, so I told the doctor, 'Excuse me, why am I being sent to be tested for HIV? This is against the law?' The doctor replied, 'It may be against the law, but we have a committee that is responsible for new selections in the CENARE, and I must ensure that they are healthy. So we negotiated with the children's hospital to perform the hepatitis test and with the Mexico hospital [which is an important health center in the country] to perform tests for syphilis and AIDS. We provide care for many people. It is our obligation to ensure that they are cared for by healthy people, and a person with AIDS is not a healthy person. "

When I heard these words, I said, 'I am going to be honest, Doctor. I have HIV, not AIDS, which are different

things, and I am not taking that test, because it violates my rights.' The doctor replied, 'I appreciate your sincerity and I will be honest, too. You will never work here, because I am the one who gives the approval, and I will never state that you are suitable for the job because you are not. You are a sick person, so it is better that you do the Fund a favor, just do not proceed with the recruitment process so that we do not waste resources on tests of which we already know the results. Anyway, you will not work here. I hope you can understand, but a person that is sick with AIDS is a threat to the patients treated at this health center, and I must ensure enforcement of the Law No 7600, not of the AIDS Law.'

All I could do was to get up and leave. I finished my working day (the interview was at 1:00 pm and I finished at 3:00 pm. I never went back to work, but I did take the necessary action since, by requiring an HIV test, CENARE and its representative, Dr. Alvarado, violated my dignity and my work rights, as well as my right to confidentiality; and I was fired for discriminatory reasons.

First, note that Article 24 of the Political Constitution of Costa Rica guarantees the right to privacy, freedom and secrecy of communications. [1] Second, the General Law on HIV / AIDS, No. 7771, of April 29, 1998 [2] states:

#### **Article 4 .- Prohibition of discrimination or degrading treatment**

All discrimination contrary to human dignity and any other act to stigmatize or segregate Carriers of HIV / AIDS, as well as their relatives and friends.

Restrictions or enforcement of actions against the rights and freedoms of individuals infected with HIV/AIDS, except as provided in this law or in the case of risky or dangerous behavior of these people, are also prohibited.

Except as provided in this law, all people living with HIV/AIDS are protected by the right that prevents interference in the development of their civil, family, employment, educational, emotional and sexual activities, the latter in accordance with the respective protection recommendations.

#### **Article 5. Regulation of rights and obligations.**

Persons who are carriers of HIV have the rights and obligations granted in the Constitution, international instruments on fundamental rights ratified by Costa Rica, those stipulated in the General Health Law, this law and other related legislation on this matter.

The violation of any right or guarantee will be reportable to the judicial authorities for an inquiry into the criminal, civil or administrative liability of the case.

#### **Article 10 .- Rights and working conditions**

All labor-related discrimination against any worker with HIV is prohibited. If a worker develops any disease that will impede his pursuance of normal activities, he shall receive the treatment as provided by labor laws.

No employer, public or private, domestic or foreign, may, on its own or through another person, request HIV tests or medical certificates from workers in the job application process or to maintain a job.

The employee is not obliged to inform his employer or coworkers about the state of HIV infection. When necessary, the employee may notify the employer, who shall maintain the confidentiality and, where appropriate, seek changes in the working conditions for the best performance of the functions, according to medical criteria.

Based on the fact that there was an act of transgression committed against my rights, I also claim to have suffered psychological aggression when the doctor told me that I was a danger to the patients of the medical center because I am infected with AIDS. Therefore, on May 24, 2009, I filed an appeal for legal protection against the human resources department of the national rehabilitation center and against Dr. Alvarez, for promoting and

requiring HIV testing to maintain or gain employment. As a proof of the above, attached to the report is the application for the test.

After 10 days, I was notified that the Constitutional Court had upheld my appeal and the CENARE was notified of my complaint. On June 5, 2009, CENARE made its declaration on the complaint, alleging that they never forced me to get tested but only made a recommendation. These and other allegations are detailed in the documentation sent by CENARE as disclaimer [attached].

On February 1, 2010, I was notified that the IV Constitutional Court ruled in my favor and condemned the CENARE, requiring it to exclude HIV testing from the hiring protocol and to compensate me for damages and prejudices. A month later, the final judgment was ready. However, we have not yet completed the contentious-administrative process, because since I did not receive any psychological care, I have no way of proving that there was any damage.

The process was slow, tiring and tedious. In addition, once the Court ruled in my favor, it was worse. My life became public and journalists started to call my home. There were articles about my case everywhere, and there was no more confidentiality. Then my situation worsened because I could not find a job. I was unemployed for one year, temping in different places to subsist. Now I have a stable job, but my conclusion is that if someone is to undertake a process like this, he or she will require a lot of support from family, friends and organizations. I received support from my family, some friends and two or three organizations, but CONASIDA, the Ministry of Health and other authorities simply ignored my request for assistance.

It is of paramount importance to protect people living with HIV from discrimination at work. It is a frequent form of discrimination in the country that violates human rights and affects the physical and psychological health of people living with HIV. Legal protections exist in Costa Rica, but we have to strengthen their enforcement and inform the public about their rights under national and international law, such as the new ILO Recommendation concerning HIV and AIDS and the World of Work adopted in 2010.

[1] (amended by Law No. 7242 of May 20, 1991. See La Gaceta No. 110 of June 12, 1991).

(\*) This article has been amended by Law No. 7607 of May 29, 1996. See La Gaceta No. 115 of June 18, 1996.

[2] Published in the Official Gazette (La Gaceta) on May 20, 1998.

49 Costa Rica

Recruitment and Selection of Staff of the National Rehabilitation Centre (CENARE)

**Exp: 09-007890-0007-CO**

**Resolution No. 2010-01874**

**CONSTITUTIONAL COURT OF THE SUPREME COURT OF JUSTICE. San Jose, at eleven and fifty-four minutes a.m., January 29, two thousand and ten.**

**Appeal for legal protection filed by XXXXXXXXXXXXXXXXXXXX, adult, singles, an accounting student, identity card number Xxxxxxxx, resident of San Gabriel de Aserri, against the Director General, the Head of the Human Resources Department and the Coordinator of the Committee on Recruitment and Selection of Staff of the National Rehabilitation Centre (CENARE).**

**Resulting:**

**1.- In a letter received at the Secretariat of the Board at eighteen hours fifty-five minutes on May 26, two**

thousand and nine, (pp. 1-5), the appellant filed an appeal for legal protection against the Director General, the Head of the Human Resources Department and the Coordinator of the Committee on Recruitment and Selection of Staff of the National Rehabilitation Center (CENARE) and states that he began working for the National Rehabilitation Centre as Assistant for Neurology Patients on April 14, 2009 through Friday, May 15. On that date, he had a job interview with Dr. Nuria Alvarado. He points out that Dr. Nuria Alvarado gave him documents for spine x-ray, hepatitis, stools and urine, HIV/AIDS and Syphilis tests. He states that he was astonished that he was being sent for an HIV test and told Doctor that this was against the law. The doctor replied that there was a committee responsible for selecting new staff for CENARE, and she must ensure that new workers are healthy. For this purpose, the CENARE had negotiated with the Children's Hospital to perform Syphilis and AIDS testing, and that her obligation is to ensure that patients are assisted by healthy people, and that a person with AIDS is not a healthy person. The appellant states that he told the Doctor that he was carrying HIV, not AIDS, and that he would not take the exam because it violated his rights. He mentions that the doctor told him that he would never work there, because she was the one in charge of giving the approval and that she would never state that was qualified, because he is a sick person. He reports that she said that he should not continue in the recruitment process because performing the tests would be a waste of resources since they already knew the results, and therefore he would never be accepted to work there, because a person with AIDS is a threat to the patients that are being treated at the health center, and that it is not their obligation to comply with the Law of AIDS. The appellant argues that the situation described is discriminatory and violates the constitutional articles 33 and 24 and the provisions of Articles 4 and 10 of Act 7771 on HIV/AIDS.

**2 .-** Under oath, Vinicio Mesen Madrigal, in his capacity as Director General of the National Rehabilitation Centre of the Social Security Fund (pages 15 to 18), reported that indeed the appellant began working at the center on an interim basis on 14 April 2009, as assistant to patients in the Therapy Service. He explains that the CENARE has an interdisciplinary team of administrative, medical, social work and psychological staff in charge of the Committee on Recruitment and Selection of Staff, whose role is to determine aspects of suitability of each candidate for the job profile of the position for which they are applying, therefore the committee's criteria are of an advisory nature. He also states that, although CENARE performs psychological and medical tests, including HIV testing, this test is voluntary, not mandatory. He claims that such test are practiced because, among other reasons, it is important to determine the health status of workers in order to decide the area to which they would be assigned; therefore, these tests do not determine whether an applicant is to be selected for a job in the institution or not, but rather, the area in which he could work. He argues that he is not aware of the manifestations argued by the appellant that he was told that he would never work in the CENARE. Also, he argues that the appellant cannot claim discrimination because, as he points out, the applicant has already been working for CENARE, and, furthermore, the results of all tests are not yet available and, therefore, no recommendation by the Recruitment Committee was issued. He states that, in any case, the recommendation could not be exclusive if the applicant was indeed HIV positive. He requests that the appeal be dismissed.

**3 .-** According to the record of June 16, 2009 (page 58), signed by the Secretary of this Court, the Head of the Human Resources Department and the Coordinator of Committee on Recruitment and Selection of Staff, both of the National Rehabilitation Center, did not provide the report as required by resolution at ten o'clock, May 28, 2009.

**4 .-** In a letter received at the Secretariat of the Court at nine forty-eight (9:48), June 26, two thousand and nine, (pages 59 and 60), the appellant refers to the report submitted by the Director General of the National Rehabilitation Center.

**5 .-** In a letter received at the Secretariat of the Court at three seventeen p.m., July 2, two thousand and nine, (page 62), the appellant states that he provides a reference of the attending physician which states his current health condition and further states that he presents no limitation in performing any type of work. He also provides details of his work functions at the CENARE.

**6 .-** In a letter received at the Secretariat of the Court at seven fifty-seven a.m. (7:57), September 14, two

thousand and nine, (pages 67 and 69), the appellant submits a fax number for the receipt of notifications.

7.- In a letter received at the Secretariat of the Court at seventeen and eleven minutes (17:11), November 17, two thousand and nine, (page 71), the appellant submits new fax numbers to for the receipt of notifications.

8.- The above procedures followed the legal requirements.

Drawn up by Judge **Castillo Viquez**; and,

**Considering:**

**I. - Purpose of action.** The appellant argues that the recruitment and selection process to work in the CENARE requires him, among other tests, to be tested for HIV. He states that he told the person in charge of the Committee on Recruitment and Selection of Staff, which is responsible for the selection of new staff at that hospital, that he is HIV positive, and that he was not going to take this test because it violated his rights, to which he received the reply that he would never work because he was a sick person.

**II. - Proven facts.** Of importance to the decision of this case, the following facts are estimated to be duly proven, either because they have been accredited or because the Respondent has failed to refer to them as provided by the initial order:

a. On April 14, 2009 the appellant, who is HIV positive, began working in CENARE on an interim basis, as an assistant to patients in the Therapy Service (see folio 25).

b. The CENARE performs psychological and medical tests on applicants for work positions, including HIV testing, which is not mandatory (see declarations, folio 16).

**III. - On the background.** From the evidence and the testimony under oath, it is established that the appellant was referred to the recruitment process in order to qualify for a position in the National Rehabilitation Center. As reported to the Court, CENARE has an interdisciplinary team of administrative, medical, social work and psychological staff in charge of the Committee on Recruitment and Selection of Staff, whose role is to determine the suitability of candidates according to the job profile of the position for which they are applying; the role of the Committee is merely advisory. It was explained that although medical tests include HIV testing, the latter is not mandatory, and that these tests allow to better place applicants so that their functions will not be eventually affected by a deficiency or disease, and that in no case such test determine whether or not the applicant enters the institution. As mentioned above, they rather determine the place where the applicant could best perform. However, the appellant claims that the fact that HIV testing was requested as part of recruitment and selection process is a violation of fundamental rights. In this regard the Court has considered that:

*"IV.- discriminatory measures against a person because of his/her HIV infection or AIDS disease is not expressly prohibited by the international instruments cited, however, it may be understood from the general provision in these rules, which prohibits discrimination based on "any other social condition", that they include the prohibition of discrimination based on sexual orientation or physical disability. However, the principle of nondiscrimination has its limits, since not every differentiation of treatment constitutes discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a legitimate purpose, i.e., any difference, if it is not to be regarded as discriminatory, must be objective and pursue a legitimate aim in compliance with the human rights instruments mentioned. The imposition of unnecessary or unreasonable restrictions to people with AIDS at the workplace constitutes discrimination. Any distinction of treatment or regulatory uniqueness requires a strong, reasonable and proportionate justification.*

(...)

*Discriminatory measures against people who test positive cannot be applied in relation to access to employment,*

*or to free dismissal, unless it is proven that the absence of infection is a necessary bona fide qualification for the position, or that the infection may significantly affect the performance of the tasks. The same applies to other diseases that cause a substantial reduction in employee performance. The pre-employment medical examination to detect HIV status should not be required and the employee should not be obliged to inform the employer about their HIV status. Similarly, seropositivity should not be cause for termination of employment, as long as the patient remains medically fit to work. (SCV 2005-012408 eleven fifty two (11:52), September 9, 2005).*

Considering the above, the Court finds that, in this particular case, although the National Rehabilitation Center has clearly expressed the objective reasons for requesting the voluntary HIV testing to applicants such as that the nature of work in the center requires employees be in optimal health conditions, according to each particular position, it is considered that the assertions of the Center are unfounded. This is because Article 10 of the General Law on HIV / AIDS, No. 7771 of April 29, 1998, published in La Gaceta No. 96, May 20, 1998, literally reads:

*Article 10 .- Rights and working conditions*

*All labor-related discrimination against any worker with HIV is prohibited. If a worker develops any disease that will impede his continuing with normal activities, he shall receive the treatment as provided by labor laws.*

**No employer, public or private, domestic or foreign, may on its own or through another person, ask workers for HIV statements or medical certificates from workers in the job application process or to maintain a job.**

(Emphasis added).

*The employee is not obliged to inform his employer or coworkers about the state of HIV infection. When necessary, the employee may notify the employer, who shall maintain the confidentiality and, where appropriate, seek changes in the working conditions for the best performance of the functions, according to medical criteria.*

Hence under no circumstances should this request for the medical evidence be accepted, even if it is “voluntary” and performed by an advisory committee to issue a ‘recommendation’, as it is already prohibited by law. Therefore, for practical purposes, it is irrelevant to argue that it was a voluntary test. It should also be noted that although the medical and psychological tests are essentially complementary, as they not part of the applicant’s overall rating, and can not operate as a condition for the exclusion of participants *a priori*, it is certain that a test like the one proposed to the appellant could involve invidious discrimination and unlawful invasion of privacy guaranteed by the Constitution to all inhabitants of the Republic. Therefore, it is considered appropriate to declare the appeal valid due to violation of the rights protected in Articles 24 and 33 of the Constitution and with the effects mentioned in the operative part of the sentence.

**Therefore:**

The appeal is declared to be founded. It is ordered that Mesén Vinicio Madrigal, in his capacity as Director General of the National Rehabilitation Centre (CENARE) or whoever may hold the position, to cease HIV testing for AIDS screening in candidates for jobs of that institution, even if they are voluntary. It is warned that, based on the provisions of Article 71 of the Constitutional Jurisdiction Act, the penalty is imprisonment of three months to two years, or twenty to sixty day-fines, for he who receives an order to implement or enforce, dictated on an appeal for protection and does not comply or enforce it, if the offense is not more severely punished. The Social Security Fund is ordered to pay costs and damages caused by the facts that form the basis of this declaration, which will be settled as execution of administrative litigation. This resolution is to be notified personally to Vinicio Mesén Madrigal, in his capacity as Director General of the National Rehabilitation Center or whoever may serve in that office. Let this be communicated.

*GENERAL DIRECTION*

JUDICIAL POWER CONSTITUTIONAL COURT, 05 JUNE 2009, RECEIPT

June 5, 2009

APPEAL FOR LEGAL PROTECTION

FILED BY: X

AGAINST: National Rehabilitation Center

CONSTITUTIONAL COURT OF THE SUPREME COURT

The undersigned, **Mesen Vinicio Madrigal**, of legal age, married once, medical doctor, identity card **number nine-one hundred and seventy - seven hundred forty-six, a resident of Santa Ana, San José**, General Attorney-in-fact with amount limit as **Director General of the National Rehabilitation Center, the Costa Rican Social Security Fund**; given the resolution made as of ten zero minutes (10:00), May 28, two thousand nine, I proceed to provide an answer in due time and manner with the following:

**PREVIEW:**

We inform the Honorable Constitutional Court that this Division has no direct knowledge of the facts of this appeal for protection. Therefore a report was requested from the Attending Physician and the head of Human Resources of the National Rehabilitation Center.

**ON THE ALLEGATIONS BY THE APPELLANT:**

**FIRST:** The appellant began working at CENARE on an interim basis on April 14, 2009, as Assistant to Patients in the Therapy Service.

**SECOND:** That, in fact, CENARE has an interdisciplinary team of administrative, medical, social work and psychology staff in charge of the Committee on Recruitment and Selection.

**THIRD:** That in the role of the Commission to determine aspects of suitability of each candidate for the job profile of the position for which they are applying, the committee's criteria are of an advisory nature.

**FOURTH:** That, as alleged by the appellant, it is true that CENARE performs psychological and medical tests, including chest and spinal X-rays, laboratory tests, including tests for VDRL, Hepatitis B, HIV, but may the Constitutional Court note that the latter test is voluntary, not mandatory, since, as an institution dedicated to Health, we are cognizant of the scope of Act 7771. These tests are performed because, among other considerations, it is important to determine the health status of workers and thus the area in which they would best perform. For example, the commission would not recommend that a person with chronic lower back pain work in a department where his or her function would include lifting heavy weight, for this would seriously affect his/her spine, and the worker would not be able to provide the service for which he/she was hired (public service). Therefore, these tests do not determine whether an applicant for a post does or does not enter the institution but rather the place where he/she could perform.

**FIFTH:** That the appellant's allegations that the physician told him he would never work for CENARE are not on record. In this case, I point out that the medical assessment is a section within the selection procedure, as there other tests, including psychological tests, and that laboratory tests do not determine, as already stated, whether the candidate is selected or not but rather the functions to which he is assigned, because protection is a two-way street: patient-staff and vice versa.

**SIXTH:** That the appellant cannot claim discrimination because, as he himself indicates, he had already been working for CENARE. He in no way can claim discrimination because, as stated by the Chief of Human Resources, the results of all tests are not yet ready and, therefore, the Committee on Recruitment has not yet issued a recommendation. In any case, the recommendation could not be exclusive if, indeed, the applicant was HIV positive.

**SEVENTH:** That according to medical records, patient assessment was performed in his recruitment process for an administrative or nursing position. Such a situation could determine that if he is not recommended for an area, he might be recommended for another, considering the above-mentioned parameters.

## **LAW AND OTHER CONSIDERATIONS**

For all purposes, official letter CNR.RH.863.2009, signed by Mr. Antonio Segura Brennan, Head of Human Resources, which succinctly describes the procedure for recruitment and selection, is attached. Also attached is the report by Dr. Nuria Alvarado, the Attending Physician.

## **REQUEST**

For these reasons, it is determined that there has not been any violation of the fundamental rights of the protected, so I ask that the present action for judicial protection to be **dismissed** in its entirety.

San Jose, June 3, 2009

### **Legal advice**

**To:** Legal Advice

**Subject:** Appeal for legal protection + EIS.com

San Jose, June 3, 2009

Legal advisor

National Rehabilitation Center

CENARE

Dear Sir:

I refer to the case of Mr. X, who attended a first appointment with me for an employment assessment prior to his employment as a temporarily appointed assistant to patients in the physical therapy section:

- This hospital has a multidisciplinary team for the recruitment of new staff, which consists of several professionals who assess each job applicant individually, based on their respective disciplines: psychology, social work, medicine. A set of rules is provided for each discipline. While psychologists and social workers apply questionnaires to assess the applicant's mental health, we as physicians must assess the applicant's state of health to determine a profile of their prospective position.
- A number of general tests are ordered such as chest x-rays to rule out pulmonary diseases such as tuberculosis, which is contagious, COPD (chronic obstructive pulmonary disease), a serious lung condition that occurs with multiple bronchial infections; VDRL testing, which is the test for syphilis, another contagious disease; Hepatitis B, which is very dangerous; HIV test for AIDS screening and full spine X-ray to determine if person can carry out their assigned tasks and does not have a congenital disease, such as a scoliosis, which can worsen with exertion and may result in permanent disability or a herniated disc that should be operated upon despite uncertain results. This is done because we are not working with documents or screws but with patients with cerebral palsy, spinal injuries, strokes, hemophiliacs and others with compromised immunity.
- Each candidate undergoes tests during a second appointment with me, and based on the results, is given a score of 100%, 80% and so on. if the candidate is healthy or does not have an infectious disease, he/she passes the medical test. And, I cannot lie and say that someone with a problem is healthy. Sometimes, if we find an injury, the person is referred to their assigned center for treatment - and if we can, we treat him here - with the score allocation that is considered appropriate.

- I explained to the appellant that if his analysis was positive, he would have to compete with other candidates and that we would select candidates who received 100% or those with higher results, as we had to protect a very vulnerable population with disabilities, as well as their own health, which is placed at a higher risk here. We also had a similar case of a worker who had been working here for more than 10 years and found out that he was positive 3 years ago. He was relocated to another Remes area, but given the amount of intra-hospital infections, his health status declined rapidly and despite being 42 years old, he is in the process of getting a disability allowance. The appellant then said that he was not taking the test as he knew he was HIV positive and decided to terminate his work appointment and not work anymore.
- According to our staff selection regulations, these are well-established general procedures that have been respected and faithfully fulfilled in our hospital.

*Social Security Fund*  
*National Rehabilitation Center*  
 Office of Human Resources Management  
 CNR.RH.863.2009  
 June 3, 2009  
 Legal Advisor

Dear Sir:

**Subject: Appeal for protection of Mr. X File No. 09-007890-0007-CO**

With regard to the matter stated, I inform you of the procedure followed in the Office of Recruitment and Selection with people who seek employment in the Medical Center.

- Applicant: he introduces himself to the Officer in charge of the Recruitment and Selection Office in search of a job opportunity and presents his curriculum vitae.
- The Officer verifies that the applicant meets the requirements according to the profile of the position for which he is applying and he is put on the wait list for a job opportunity.
- The applicant is called to work and fills out the application and begins the assessment process, performed by professionals who are members of the Committee on Recruitment and Selection of Staff (Psychology, Social Work and Medicine).
- Once we have received the results of tests or medical examinations performed by these three professionals, the Recruitment and Selection of Staff Commission meets, and each professional and the official in charge of the process present the results of these tests and proceed to make recommendations on the continuity of newly hired workers.

In the case of Mr. X, the results of the tests are not yet available; therefore the case has not yet been assessed by the Committee on Recruitment and Selection for recommendation on this matter.

50

Colombia

Individual

**APPLICATION FOR A COMPULSORY LICENSE FOR THE ARV MEDICATION KALETRA® IN COLOMBIA**

**BACKGROUND:** In Colombia, the health system is universal and united, regulated by the Ministry of Social Protection, MPS (in Spanish) by constitutional mandate. There is a decentralized system of public and private

insurance through APB (in Spanish) benefit plan administrators, the health promoting entities (EPS in Spanish) that act as intermediaries and resource managers provided by the state in the form of annual premium payments known as Payment Units for capitation and providers, health providing institutions (IPS in Spanish) - hospitals, clinics, laboratories, etc.<sup>1</sup>

Currently, EPS brokerage and management is the subject of serious allegations, as these implement multiple procedures to access a service in order to diminish operation costs. This results in inefficiencies in the operation and service network, arguing basic financial and administrative requirements. In the case of PLWHA, access to treatment is no different although by law, the system is required to administer the treatment free of cost. Patients must often resort to the courtroom to claim ownership of the fundamental right to health and access to services. Kaletra represents one of the principal reasons for demands presented through this mechanism, for which reason it had to be included in the Compulsory Health Plan (POS in Spanish).

According to the analysis of the HIV situation in the Andean subregion (2003-2005) in Colombia, the Benefit Plans cover HIV and HAART but the supply is irregular, especially in public APBs. Barriers to institutional and regulatory access exist for care related to high-cost diseases. Frequently, legal means are used to access care and treatment.<sup>2</sup>

The excessive protection of intellectual property laws represents a barrier to accessing medicines. In Colombia, an example is Kaletra<sup>®</sup> produced by Abbott Laboratories, an ARV for the treatment of HIV/AIDS. It is patented, therefore constituting a monopoly with higher prices for Lopinavir/Ritonavir compared to the other countries in the region.

**Table 1.** Historical comparison of prices for patented Lopinavir/Ritonavir vs. unpatented Lopinavir/Ritonavir. IFARMA

Description	Patent Protection	2004	2005	2006
Peru	No	2.06	1.88	0.928
Colombia	Si	2.231	2.388	2.44
Chile	Si	2.189	2.2	2.1

In 2008, the prices for Kaletra were: Institutional Channel US \$3,443.00 and Commercial Channel US \$3,296,16, while in Peru, the generic band cost US \$396.

**POLITICAL IMPACT STRATEGY OF CIVIL SOCIETY IN COLOMBIA:** In April 2008, with the technical assistance of Action Essential, four civil society organizations<sup>3</sup> requested a **voluntary license** from Abbott Laboratories, a request that, to date, has not received a response. Given this situation, proceedings were initiated with the

<sup>1</sup> Ley 100 de 1993. Colombia

<sup>2</sup> Análisis de situación de VIH en la subregión Andina 2003-2005. OPS, ONUSIDA, Organismo Andino De Salud-Convenio Hipólito Unanue-ORAS CONHU, Marzo 2007, p36

<sup>3</sup> Table of Organization working on HIV/AIDS - Colombia, IFARMA, Misión Salud y RECOLVIH

Administration to declare **access to Kaletra® an issue of public interest** before the MPS, as well as **a request for the emission of an open compulsory license** for

Kaletra® from the Superintendent of Industry and Commerce (SIC in Spanish). The request was based in the fact that the product's patent was generating an elevated price, a price that resulted in exaggerated investment in promotion and publicity and, in turn, of many cases of inappropriate use. Because of this, the EPS-IPS used various mechanisms to delay the delivery of the drug, generating a great number of drug provisions and cost recoveries even though this medicine is included in the Compulsory Health Plan.

Parallely, applicants joined to publicize the issue through communication media and participated in political lobbying. In November 2008, Decree 4302 was issued in response to this request and the legal vacuum. The decree set forth the procedure and deadlines for resolving requests of public interest declarations. In January 2009, a simultaneously demonstration took place in the USA, Mexico and Colombia, protesting Abbott's business practices and demanding the issuance of the Compulsory Licenses.

The request for the license was supported by approximately 50 organizations, people at the national and international levels.<sup>4</sup> As a result of this pressure from Civil Society, the national commission on drug prices placed the medicine under free regulation<sup>5</sup>, but DID NOT declare the matter one of public interest and the compulsory was not issued. Civil Society actors launched a new strategy: The filing of a **class action suit** in September 2009 claiming that the **collective right to a service infrastructure that ensured public health and Administrative Ethics** had been threatened. The claims presented are: 1. Order the SIC to grant a open compulsory license for the lifetime of patents granted to Abbott Laboratories to produce, manufacture, import, export, distribute, offer for settlement, sale, purchase or use of the drug commercially known as Kaletra (lopinavir/ritonavir). 2. Order Abbott Laboratories to suspend any administrative or judicial action, whose purpose is to defend the patent. 3. Order the INVIMA that allows any laboratory with quality and good manufacturing practices to register the active lopinavir/ritonavir.

**The evidentiary stage is coming to a close.**

Simultaneously, action has been taken in several areas:

**1. Media:** THE RIGHT TO HEALTH, NO TO PATENTS campaign, led by the Positive Communication Foundation through press conferences, forums, presentations in public spaces. **2. Legal:** Study of alternatives – legal action at an international level? **3. Community:** promotion of the work in social networks – currently supporting the “Global Campaign for Kaletra Access” **4. Legislative:** Draft Law No. 128 of 2009 promotes access to the drugs, corrects deficiencies in their use, orders promotion and publicity, and enacts provisions regarding drug quality. Author: F. Rossi IFARMA-AIS.

**5. Training:** production of educational material by applicant organizations (audio and booklet)<sup>6</sup> and Positive Communication is currently developing an e-learning workshop: Latin American Group on Access to Medicines (GAAM in Spanish), to determine the route of drugs in Andean Region ODM-6 (in Spanish) and fostering a development partnership ODM-8 (in Spanish) with the support of CIAT (in Spanish).

**OUTLOOK:** “A compulsory license for L/R would allow the state to obtain and provide generic imports and also allow for local production. This would result in greater product availability, increased competition and savings to the state of at least \$5,754,740,000.00 to a maximum of \$32,280,834,000.00 annually, which can be redirected to other needs (greater access, PyP)

<sup>4</sup> Documents and related materials available

<sup>5</sup> <http://www.observamed.org/>

<sup>6</sup> Material Available

- Colombia has the right to issue compulsory licenses for reasons of public interest to authorize generic competition on the basis of TRIPS, Doha and Resolution 486 of the Andean Community of Nations.

Experience shows that a mobilized civil society can succeed despite government resistance.<sup>7</sup>

- The issuance of compulsory licenses to minimize the negative impact of excessive rights of the patent holder requires an agreement in terms of a political decision.
- The REGIONAL SUPPORT for the Realization of this License through Popular Action is important. This can be done by filing support for this goal with Administrative Court 37, Bogota, D.C.

51 Peru

PROMSEX – Centro de Promocion y Defensa de los Derechos Sexuales y Reproductivos

### Criminalization of Consensual Sexual Relations Between and With Adolescents

**Summary:** This paper documents the existing legal framework that penalizes consensual sexual relations between and with adolescents in Peru, a regulatory barrier for access to HIV prevention services. It is contrary to international standards and specific national norms governing the subject, and has affected the compliance with preventative public policies in this population.

Since April 2006, freely consensual sexual relations between and with 14 to 18 year-old adolescents in Peru are considered to be a sexual offense. If the Penal Code established all sexual relations of adolescents as criminal, whether consensual or not. As a result, all sexual and reproductive health care services for adolescents that are not geared towards abstinence are also made illegal. These include prevention services for HIV, other STDs and pregnancy. Institutional attention for pre natal control and birth is also put at risk due to the fact that pregnancy is proof of a criminal offense.

The negative impact of the governing norm is that adolescent access to HIV prevention services has been excluded from various national publications. The Health Ministry (MINSA in Spanish) notes an increase in registered HIV/AIDS cases in adolescents and youth. The regulation has prevented the achievement of UNGASS goals as related to prevention in youth populations. The same occurs with the achievement of national policies like the National Action Plan for Infants 2002-2010 whose Strategic Objective N. 3 proposed the reduction of STDs and HIV/AIDS in adolescents by 2010, a goal which was not met, and the Multisectoral Strategic Plan 2007-2010 for the Prevention and Control of STDs and HIV/AIDS in adolescents and youth in Peru. This prevents reaching the Millennium Development Goal of halting and reducing the propagation of HIV and STDs by 2015.

In an attempt to reduce the effects of this issue, several regional regulations have been developed that authorize care for adolescents for the prevention of HIV. However, in light of jurisprudence of the Peruvian Constitutional Court on the principal of *national loyalty*, its constitutionality is doubtful, and for this reason, multiple draft laws have been presented to reform the penal regulations, none of which have been approved to date.

Underlying the criminalization of all sexual relations between/with adolescents – and the opposition to reforming the law – a notion of them as objects of protection exists, more so than as subjects with rights who progressively assume their own decision-making abilities regarding various aspects of their lives. The protection is exercised as a protection against rape in the sense that they do not have the sufficient ability to discern their own sexuality and, therefore, any sexual relations without differentiating among them, must be considered an attempt against their integrity.

<sup>7</sup> COMUNICADO DE PRENSA. Preocupación de ONUSIDA, el PNUD y la OMS por la sostenibilidad y la ampliación del tratamiento del VIH. ONUSIDA, el PNUD y la OMS animan a los países a aprovechar las flexibilidades establecidas por el acuerdo sobre los ADPIC para reducir costes y mejorar el acceso al tratamiento del VIH Ginebra, 15 de marzo 2011

International human rights standards recognize that adolescents are subjects with rights and specifically should have access to sexual and reproductive health services. Peru has received specific recommendations from the Committee on Children's Rights to improve the sensitization about HIV in the adolescent population and guarantee access to services. What's more, there not only exists a discontinuity in the international regulations, but also internally since various national laws recognize the beginning of sexual relations during adolescence and a specific infra-legal regulation exists in relation to adolescent access to STD counseling services.

In turn, despite not being a direct criminalization related to HIV, criminalizing sexual relations of a vulnerable population such as adolescents adversely affects their access to rights and their exposure to the epidemic.

#### FOOTNOTES

<sup>1</sup> Law N 28704 published April 5, 2006

<sup>2</sup> Entre ellas, OMBUDSMAN. Defense Report N 143. Strengthening the response to the HIV/AIDS epidemic; supervision of prevention services, care and treatment of HIV/AIDS Lima: Ombudsman, 2009; RED SIDA PERU. Analysis of the regulatory Framework for adolescent access to sexual and reproductive health services with an emphasis on HIV/AIDS. Lima: RED SIDA Peru, 2009; and HEALTH MINISTRY and UNITED NATIONS POPULATION FUND. Regulated political balance related to adolescent access to sexual and reproductive health services and HIV/AIDS prevention. Lima: IES, 2009.

<sup>3</sup> Technical document *Analysis of the health situation of adolescents – placing them and us*, approved by Ministerial Resolution N 636-2009/MINSA published September 23, 2009 p. 67-72.

<sup>4</sup> HEALTH MINISTRIES. National report on progress achieved in the application of UNGASS; period between January 2008 and December 2009. Lima: MINSA, March 2010, pp. 61, 123-124; VIA LIBRE. Report on the meeting of UNGASS-AIDS goals in sexual and reproductive health for women and trans populations. Lima: Via Libre, 2010, p. 35.

<sup>5</sup> Approved by Supreme Decree N 003-2002-PROMUDEH published on June 10, 2002. Subsequently,

<sup>6</sup> Approved by Supreme Decree N. 005-2007-SA published May 3, 2007.

<sup>7</sup> For example, Regional Ordinance 025-2008-GRT-CR of the Tumbes Regional Government, Regional Ordinance N. 0005-2009-GORE-ICA of the Ica Regional Government, Regional Ordinance N. 012-2009-GRL-CR of the Loreto Regional Government and Regional Ordinance N. 011-2009-GRU-CR from the Ucayali Regional Government.

<sup>8</sup> In this sense, the General Observations N. 14 (numerals 23, 35) and N. 20 (numeral 29) of the Economic, Social and Cultural Rights Committee, General Observations N. 24 (numerals 8, 18, 23, 29 and 31) and N. 28 of the Committee on Elimination of Discrimination Against Women, and the General Observation N. 4 (numerals 2, 20, 28, 30, 31, 39, 40 and 41) of the Committee for the Rights of Children.

<sup>9</sup> CRC/C/PER/CO/3, March 14, 2006, numerals 53, 56-57.

<sup>10</sup> For example, the Peruvian Civil Code (article 46, 241, 244) recognizes the capacity of adolescents starting at age 14 to engage in acts related to sexuality and reproduction such as recognizing children, requesting pregnancy and birthing costs, and requesting and being part of the process of legal recognition of extramarital filiation, possession and rearing of their children. What's more, they are able to wed as of age 16.

<sup>11</sup> Like Ministerial Resolution N. 583-2005 of July 26, 2005 that approved the *Counseling Protocols for Integrated Adolescent Care* and Ministerial Resolution N. 264-2009/MINSA of April 23, 2009 that approved the *Technical Document: Counseling for STDs/HIV and AIDS, developed by ESN STD/HIV/AIDS*.

52 Bolivia

Observatorio Jurídico de VIH y Derechos Humanos  
Comité Nacional de Acceso Universal para GBT y HSH

### **ACT 3729, Act that RESTRICTS THE PARTICIPATION of GBT, MSM and persons concerned, and lacks a comprehensive approach to promote a favorable environment for people living with HIV. What are its effects?**

The HIV and Human Rights Legal Observatory is a tool for the observation and promotion of human rights and to report cases of human rights violations of PLWHA and populations vulnerable to HIV in Santa Cruz de la Sierra and Bolivia. The objective is to contribute to the promotion, protection and respect for human rights of people living with HIV (PLHIV) and those affected, by promoting favorable conditions to reduce discrimination and stigma.

The National Committee for Universal Access for GBT and MSM is a community initiative with the participation of civil society, GBT and MSM organizations, and international cooperation that seeks universal access for gay, bisexual, transgender people and Men who have sex with Men in Bolivia.

In August 2007, the Plurinational State of Bolivia passed the 3729 Act

**ACT 3729. The "Law on the Prevention of HIV/AIDS, the protection of human rights and comprehensive multidisciplinary care for people living with HIV/AIDS" does not allow the participation of people affected by HIV and AIDS;** it only provides for the participation of people living with HIV and AIDS. The law serves as a national umbrella for the work on HIV and AIDS, and has become a powerful tool to guarantee the rights and duties of people living with HIV and AIDS.

However, the law does not include actions to ensure the implementation of human rights of vulnerable populations: youth, GBT, MSM, drug users and sex workers. The focus of this law is only to guarantee universal access for any person living with HIV and AIDS.

It is necessary that the law protect the rights of these groups and promote non-discrimination against these populations; they must **participate. Why doesn't this have any effect on them?**

Below are some effects of the exclusion of this law.

- Participation in CONASIDA (National AIDS Council) and CODESA (departmental AIDS council) has been limited to only PLWHA, and the rest of affected populations such as GBT, MSM, youth, TSC, are not allowed to participate; public policies are being developed without the participation of all affected populations (ART - ART 11 and -12)
- The Act has not provided for any specific action to reduce the discrimination and social stigma that affects GBT, MSM, Youth and TSC affected populations.
- The Act has not been specified actions to achieve targeted prevention in the misnamed risk groups (according to the law); it simply speaks of prevention actions for the general population.
- The law does not respect sexual and gender diversity (ART 25)
- The Act does not contemplate the delivery of prevention tools (condoms and lubricant) for vulnerable populations, in particular GBT and MSM, where the HIV epidemic is concentrated (ART 27).
- The training of health personnel is only focused on the human rights of PLWHA, excluding the training of human rights of MSM and GBT groups and other affected population groups, which will not contribute to decreasing homophobia and social stigma towards these populations. (ART-48)

These are the main impacts that we have noted as the consequence of this exclusion:

- GBT and MSM groups and other population groups affected though not yet living with HIV and AIDS have no say in spaces such as the CONASIDA and CODESIDAs, aimed at achieving universal access to prevention services for their peers and to generate comprehensive policies for universal access.
- An Observatory on Human Rights and HIV is being implemented with Global Fund resources but this was limited to the human rights of PLWHA only as part the 3729 Act, and advocacy action has not been extended to the human rights of TSC, gay, bisexual, trans, young people and others affected by HIV and AIDS.
- The national government has not bought condoms and lubricants (prevention tools) because Act 3719 does not provide for it, and no other document requires or urges the provision of these tools.
- Absence of comprehensive policies to create enabling environments for the full exercise of human rights of MSM, GBT and other affected populations. It is common to think that the resources allocated against HIV and

AIDS should be used only for drugs and for achieving the rights of PLWHA; there is no comprehensive approach to achieving human rights of affected populations and thus increase universal access.

- Given the concentration of the epidemic in GBT and MSM populations and the importance of achieving human rights for universal access, it is paradoxical that those specific groups cannot participate in the development of public policy in favor of their own lives and communities.

The aim of writing this report is to make the region and the country realize that although the epidemic is concentrated and has a prevalence of 11.60% in the gay, bisexual, transgender and men who have sex with men populations, the main barrier to our participation in **public policy development; in the creation of enabling environments to exercise our rights and to reduce stigma, discrimination, homophobia, transphobia; and achieving universal access to prevention tools is the Act itself.** It is also pertinent to report that the Bolivian National Human Rights Plan 2009-2013 plans to reform the law but as a goal for 2013. We, the GBT and MSM population, need to learn in order to act.

53 Guatemala

CIAT - ITPC

## Leyes y prácticas que facilitan o impiden el acceso a tratamiento relacionado con el VIH

### Ensayo sobre la terapia adecuada para el tratamiento del VIH

En Guatemala, el sistema de salud opera con sus propios fondos y con el apoyo de la cooperación internacional en el temas de VIH, con el fin responder a la epidemia de VIH en Guatemala. Uno de los apoyos que han contribuido en gran medida a esta lucha es el del Fondo Global de lucha contra el SIDA, la tuberculosis y la malaria. A través de este apoyo, se pudo mejorar la respuesta tanto en materia de atención como de prevención. Pero aún con este apoyo, la respuesta no llega al nivel de una atención integral y todavía siguen muriendo muchas persona por falta de la atención oportuna.

A través del trabajo con grupos de población como mujeres, HSH, población trans, gay, bisexual, heterosexual, jóvenes, niños, personas con VIH, hombres que se dedican al trabajo sexual, entre otros, se ha podido identificar que existen obstáculos para la salud integral de esto grupos. Estas barreras son de orden geográfico, cultural, social, económico, familiar, institucional, personal, etc.

Barrera económica: La epidemia ha golpeado severamente a los pobres, que se ven en la obligación de decidir si dedican el dinero obtenido en un día de trabajo a comida para ellos y/o para sus hijos o a cubrir los gastos de transporte necesarios para desplazarse a recoger sus medicamentos.

Barrera geográfica: Todavía no se han descentralizado los servicios de atención sanitaria. Según el informe del UNGASS de 2010, el 31% de las personas que necesitan tratamiento antirretroviral no lo pueden conseguir en los centros de salud disponibles.

Barrera cultural: Al tratarse de un país multiétnico y multilingüe, con cerca de 22 idiomas y una población indígena del 51%, se hace aún más difícil llegar a toda la población guatemalteca.

Barrera social: Nuestro país experimenta todavía un alto grado de estigma social y las diferencias de clase en las prácticas discriminatorias.

Barrera familiar: Esta misma discriminación hace que sea difícil para las personas revelar su diagnóstico y por lo tanto, acceder al tratamiento y la continuidad por parte de las personas que sí lo tienen.

Barrera personal: A menudo tienen un trabajo para no ser una carga para los demás,

Institucional: En el ámbito laboral, todavía muchas compañías realizan éstas y otras pruebas con carácter sin pedir permiso. A la gente simplemente se le dice que no fueron aceptados para el trabajo sin dar otra explicación.

Esto se suma a las barreras existentes en lo relativo al acceso a los medicamentos.

Para reducir el estigma y la discriminación, hay procesos de concientización, pero aún queda mucho por hacer. En relación con nuestros grupos étnicos, se ha comenzado a tenerlos en cuenta en los procesos de investigación, prevención y atención.

Para que el comportamiento de la oferta retrovirales en el país es estable es necesario apoyar el seguimiento de las distintas clínicas a través de ONG y grupos de personas con el VIH con el fin evitar posibles interrupciones. También es necesario apoyo técnico para los procesos de contratación que se dan en el país.

La situación de este país latinoamericano es similar a la de muchos países de la región y del mundo.

## **TRATAMIENTO 2.0**

El tratamiento del VIH es una forma muy poderosa de prevención del VIH. Los extensos ensayos clínicos llevados a cabo en 13 países han demostrado que un inicio temprano del tratamiento por parte de las personas seropositiva, antes de que empeore su estado de salud, puede reducir el riesgo de transmisión a parejas no infectadas en un 96%.

## **"CAPÍTULO 4 | TRATAMIENTO DEL VIH**

En 2010, la OMS publicó una revisión de las directrices de tratamiento en la que se recomendaba el inicio temprano de la terapia antirretroviral, en un recuento de CD4 por debajo de 350 células/mm<sup>3</sup>. Con estos nuevos criterios se ha aumentado casi en un 50% el número total de personas que reúnen los requisitos médicos para optar a terapia antirretroviral en aproximadamente, pasando de 10 millones a 15 millones en 2009.

La mitad o algo más del total de adultos candidatos a tratamiento (CD4 <350 células/mm<sup>3</sup>) ya estaban recibiendo terapia antirretroviral en 29 de los 109 países de ingresos bajos y medios para los cuales había datos disponibles en diciembre de 2009. Ocho países (Botswana, Camboya, Croacia, Cuba, Guyana, Namibia, Rumania y Rwanda) alcanzaron una cobertura del tratamiento antirretroviral del 80% o más. De los 25 los países de renta media baja con mayor número de personas que viven con el VIH, Rwanda logró una cobertura del 88% entre adultos, Botswana del 83% y Namibia del 76%. Once de estos países (Camerún, Costa de Marfil, Ghana, India, Indonesia, Mozambique, Sudáfrica, Ucrania, República Unida de Tanzania, Vietnam y Zimbabwe) tuvieron una cobertura inferior al 40%.

Indonesia y Ucrania informaron de una cobertura en adultos inferior al 20% (cuadro 4.1).

### **La cobertura de terapia antirretroviral para los niños es inferior a la de los adultos**

El número de niños menores de 15 años que reciben terapia antirretroviral aumentó en un 80.000 (o 29%) en 2009, pasando de 275 000 a 354 000.

## **ELEMENTOS CLAVE DE LA REVISIÓN DE IAS DIRECTRICES PARA LA TERAPIA ANTIRRETROVIRAL DE LA OMS (2010)**

Iniciar la terapia antirretroviral cuanto antes;

Comenzar la terapia antirretroviral cuando el recuento de células CD4 sea inferior a 350 células/mm<sup>3</sup>. Recurrir a

opciones menos tóxicas y menos agresivas;

Reducir el riesgo de eventos adversos y mejore el cumplimiento del tratamiento mediante el uso de medicamentos menos tóxicos y combinaciones de dosis fijas.

Mejorar la gestión de coinfecciones entre VIH y tuberculosis o hepatitis B;

Comenzar terapia antirretroviral con todas las personas que viven con el VIH que tienen tuberculosis activa y la hepatitis B crónica, independientemente del recuento de células CD4;

Promover el uso estratégico de seguimiento de laboratorio;

Recurrir a pruebas de laboratorio como recuentos de CD4 y de carga viral para mejorar la eficiencia y la calidad del tratamiento y la atención del VIH. <sup>8</sup>

La Coalición Internacional de Preparación para el Tratamiento (ITPC), una red global de promotores del acceso al tratamiento del VIH, acoge con satisfacción los resultados de un estudio de investigación innovador realizado con el apoyo de los Institutos Nacionales de Salud de EE.UU.

Los ensayos clínicos aleatorios que se estaban realizando en distintos países, con una muestra de 1.753 parejas en las que uno de los miembros estaba infectado, realizadas por la Red de Ensayos para la Prevención del VIH (HPTN) - una asociación mundial dedicada a reducir la transmisión a través de intervenciones conductuales, estructurales y biomédicas de vanguardia – se abandonaron hace cuatro años, dada la drástica reducción en el riesgo de transmisión. Sólo hubo un caso de transmisión entre los miembros de una pareja en terapia antirretroviral (TAR) en comparación con las 27 transmisiones de VIH que se produjeron en el otro grupo.

Las conclusiones del estudio HPTN 052 subrayan la necesidad de continuar con la expansión del tratamiento de VIH para que no sólo sirva para salvar la vida de las personas infectadas, sino también para impedir la propagación del virus a otras personas, un hallazgo con el que se había especulado durante algún tiempo en estudios de observación. De esta manera, el tratamiento contra el VIH puede incluirse ahora como parte de nuestra batería de herramientas de prevención junto con la circuncisión, los microbicidas, los cambios de comportamiento, los preservativos, o el programa para la reducción del intercambio de jeringas. Además, el tratamiento del VIH también puede contribuir a la reducción de muertes por tuberculosis y de la morbilidad por otras co-infecciones. Gracias a la ampliación del acceso a servicios de salud a tratamiento a millones de necesitados es posible cambiar el rumbo de la epidemia del VIH.

ITPC hace un llamado a donantes y gobiernos nacionales para que renueven su compromiso con el VIH. Recortar ahora la ayuda económica destinada a hacer frente a la eliminación del virus sólo logrará un efecto rebote de la epidemia del SIDA. El Secretario General de las Naciones Unidas ha hecho un llamamiento para garantizar el tratamiento a 13-15 millones de personas para 2015. Es nuestra misión no parar hasta alcanzar este objetivo y el contar con los recursos necesarios para ampliar el acceso al tratamiento del VIH y a servicios de salud, y para acabar con las barreras sociales, económicas, culturales y comerciales que se interponen en la consecución de este objetivo.

54 **Brasil**

**LASER/DENSP/ENSP/FIOCRUZ – Escuela Nacional de Salud Pública (Brasil)**

Mi nombre es X, una mujer activista afro-brasileña y latina. Mi objetivo aquí es presentar de forma muy resumida el trabajo que he estado haciendo como asistente de investigación en el Laboratorio de Evaluación de

<sup>8</sup> Chapter 4: HIV treatment | 2010 GLOBAL REPORT 97. Page 96/97

Enfermedades Endémicas de la Escuela Nacional de Salud Pública de la Fundación Oswaldo Cruz de Río de Janeiro. Las principales áreas de trabajo de nuestro grupo de monitoreo y evaluación son la institucionalización, la investigación, la recopilación de pruebas, así como tratar de ofrecer una mejor información para orientar la toma de decisiones relacionadas con el VIH en el país, así como en otros países asociados. Durante muchos años hemos colaborado con el Programa Nacional de SIDA y con otras instituciones con el fin de consolidar las prácticas de monitoreo y evaluación y compartir y mejorar buenas prácticas relacionadas con las actividades de prevención y tratamiento.

Como es bien sabido, Brasil ha ido conquistando a lo largo de los años un gran reconocimiento por sus esfuerzos en la epidemia de sida, principalmente a través de su sociedad civil. La ley ha desempeñado un papel importante en nuestras iniciativas relacionadas con el tema desde principios de los 80, incluso antes de que se estrenara la nueva Constitución Federal (1988), durante el llamado proceso de redemocratización. Conscientes de que los derechos civiles y sociales que en general garantiza la nueva Constitución también deben aplicarse a los nuevos casos de SIDA, algunos abogados que estaban comprometidos o sensibilizados con la situación han recurrido a esto como una estrategia exitosa para poner de manifiesto los derechos relacionados con el VIH. Muchos o la mayoría de estos abogados trabajaban como voluntarios en nuevas organizaciones no gubernamentales establecidas como respuesta a los retrasos de los programas gubernamentales.

Brasil es un caso tan singular, tal vez debido a otros cambios paralelos que estaban ocurriendo en el país coincidiendo con el comienzo de la epidemia, que ha sido objeto de análisis en muchos lugares, congresos y revistas académicas, sirviendo incluso como modelo a seguir. Durante casi 30 años, los activistas del SIDA de Brasil, muchos de los cuales formaban parte de diferentes estamentos del Ministerio de Salud, han sido conscientes de que la ley es una herramienta poderosa para proteger los derechos (incluso aquellos que están formalmente reconocidos) y para mejorar las acciones de respuesta. En 1996, se aprobó una ley federal para garantizar el tratamiento gratuito a todos los pacientes con SIDA, y esto incluso por delante de otras prestaciones sociales. Sin embargo, como se ve en los informes del UNGASS más recientes y en otros informes alternativos de las ONG, la falta de respeto hacia estos derechos y la violación de los mismos son más frecuentes que lo que uno se imagina.

Consciente de que la Comisión Mundial sobre el VIH y la ley tiene por objeto desarrollar recomendaciones basadas en los derechos humanos y fundamentadas con pruebas desarrollar respuestas eficaces al VIH que protejan y promuevan los derechos humanos tanto de las personas que viven con el VIH como de la más vulnerables a él, he decidido compartir un tema que desde hace poco otros miembros de nuestro grupo y yo misma estamos investigando. Como se mencionó anteriormente, nuestro un grupo de trabajo, como especialista en M&E, y yo en particular, como abogada y comprometida personalmente con la lucha contra el SIDA, decidimos investigar las pruebas reunidas a lo largo de años de trabajo de los servicios jurídicos de las organizaciones no gubernamentales.

Estos servicios legales son apoyados financieramente por el PAN y tienen por objetivo permitir un mejor acceso a la justicia, realizar actividades de educación sobre derechos humanos y denunciar violaciones de los derechos humanos relacionadas con casos de VIH. Hay más de 90 servicios jurídicos de ONGs repartidos por todo el país.

El Plan de monitoreo y evaluación fue diseñado con la participación representantes de ONG y del PAN con el fin de reunir pruebas para orientar mejor los recursos humanos y financieros en materia de derechos humanos relacionados con el SIDA y las poblaciones clave. Durante más de 14 meses se estuvieron analizando documentos, entrevistas, las visitas a los servicios jurídicos y los archivos del PAN y los resultados no eran tan esperanzadores como se esperaba.

Aunque hay un sistema nacional de seguimiento para denunciar los casos de violación de derechos humanos relacionados con el VIH, ni el PAN ni las ONG que reciben estas denuncias o informaciones lo utilizan. Con este sistema se podría orientar la planificación, identificar las poblaciones y las regiones donde se dan con mayor frecuencia los abusos y, sobre todo, qué tipo de abusos son los más comunes. El hecho es que muchas de las

prueba revelaron donde se producen la mayoría de los abusos y violaciones de este tipo es precisamente en las instituciones municipales y federales del Estado (ya sean servicios de salud u otros servicios sociales). Violaciones que uno no se esperaría en Brasil, son más frecuentes que lo que se denuncia, por ejemplo: la violencia contra las PVVS, contra los hombres que tienen sexo con hombres, contra trabajadoras sexuales, contra mujeres (sobre todo por parte de sus compañeros), así como violaciones relacionadas con el acceso a tratamiento, a beneficios sociales (como subsidios para la compra de alimentos, abono de transporte gratuito, jubilaciones anticipadas) y a los tribunales de justicia.

Tanto la Comisión Mundial sobre el VIH como el Derecho tienen por objeto, como se indica en la página web, aprender de las experiencias y perspectivas de las personas, y esta experiencia de llevar a cabo un estudio de evaluabilidad y un ejercicio de monitoreo y evaluación de la principal estrategia de Brasil para promover y proteger los derechos relacionados con el VIH y los servicios jurídicos de las ONG, destacan la importancia de dar seguimiento a la formulación y aplicación de leyes en los países de América Latina. Hoy en día ya no hay duda de que una planificación, una ejecución, una programación y una inversión que no vayan acompañadas de un ejercicio de M&E adecuado y constante no conseguirá alcanzar los resultados esperados de forma eficaz.

Por lo tanto, espero que la Comisión reconozca la importancia de monitorear y evaluar temas y programas de derechos humanos relacionados con el VIH a partir de los resultados esperados. Además, esperamos profundamente que la Comisión nos permita presentar y discutir con otros socios más detalles de esta reciente investigación y otras investigaciones previstas en la región.

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55 Peru

Defensoria del Pueblo de Peru (Ombudsman of Peru)

## THE INTERVENTION OF THE OMBUDSMAN OF PERU IN THE RESPONSE TO HIV/AIDS

### GENERAL ASPECTS

In the framework of constitutional competencies and of the international commitments assumed by the Peruvian State in relation to the protection of human right and in the fight against HIV/AIDS, the Ombudsman considers necessary its intervention in the promotion and defense of the human right of people with HIV/AIDS and of the people most vulnerable to this epidemic.

The intervention on this subject began more than four years ago. We believe that the ability to share the work done and results obtained is important, so that this knowledge may be replicated in other countries to contribute in the struggle against the HIV/AIDS epidemic to the extent possible.

## **INTERVENTION STRATEGY**

At the beginning of 2007, the Ombudsman incorporated a line of intervention, prioritizing HIV/AIDS to contribute in the struggle against the epidemic by incorporating the human rights perspective in State response and the supervision of the Public Administration's implementation of legal obligations.

To that end, the following lines of intervention were established:

1. Consolidate the work of the Ombudsman in the protecting the rights of PLWHA and vulnerable people.
2. Assist PLWHA and vulnerable people in accessing essential and quality public services.
3. Assist PLWHA and vulnerable people in accessing the mechanisms for human rights protection and administration of justice.
4. Assist in decreasing the stigma and discrimination associated with HIV.

The "Support of Human Rights for People Affected by and Living with HIV" project was launched that same year, with funding from UNAIDS and UNDP, within the framework of a set of activities including:

- Development of public defender intervention guidelines on the issue of HIV/AIDS – Public Defender Office Document N. 3 "The HIV/AIDS epidemic: The Role of the Ombudsman"
- Internal training workshops for Ombudsman office personnel, emphasizing the interrelationship between HIV and human rights.
- Development of a study about the HIV/AIDS situation in Peru and the exercise of rights by PLWHA.
- Training workshops for public entities, PLWHA and vulnerable people.
- Participation in campaigns against stigma and discrimination associated with HIV/AIDS.

The sustainability of the progress achieved through the activities listed was made possible through the programming of new actions in 2008 and 2009, which include the first public defender supervision in matters of HIV, as well as the development of the Public Defender Office Report N. 143.

### **The Public Defender Report N. 143 "Strengthening the response to the HIV/AIDS epidemic: Supervision of the HIV/AIDS prevention, care and treatment services"**

During 2008, the Ombudsman supervised the HIV prevention, care and treatment services of the Health Ministry (MOH) to verify compliance with the governing rules; detect whether there are deficiencies in performance; and contribute to strengthening the health response with recommendations to reverse the problems identified.

This report presents information on the epidemic in Peru and on the State's response. It addresses the existing interrelationship between human rights and HIV; summarizes the national policies regarding human right; and describes the role of MOH in its health response to HIV/AIDS.

As a result, the Public Defender Report N. 143 "Strengthening the response to the HIV/AIDS epidemic: Supervision of the HIV/AIDS prevention, care and treatment services" was published in 2009.

This report focuses on the main legal provisions governing STDs and HIV/AIDS counseling services, Periodic Medical Attention (PMA), diagnosis of HIV/AIDS in pregnant women, prevention of vertical transmission and antiretroviral treatment (HAART), and identifies the main problems identified with the regulations, such as:

- Imprecision and regulatory contradiction in HIV/AIDS prevention, care and treatment in the adolescent population
- Profusion of rules in the regulation of services
- Lack of organization and systematization of regulations
- Complicated access to technical standards and guidelines

- Poor legislative technical standards and guidelines
- 

The following conclusions, among others, arise in relation to the supervision:

- More than 50% of the supervised establishments do not respect the free service of the PMA.
- More than 50% of the establishments have registered problems with shortages of supplies for the diagnosis of syphilis and HIV in pregnant women from 2007 to 2008.
- 83 % registered problems with antiretroviral shortages for pregnant women with HIV from 2007 to 2008.
- More than 50% of the establishments registered problems with antiretroviral shortages for adults, adolescents and children in 2008.

Finally, the Report presents a set of recommendations and reminders aimed at reversing the identified problem. These, among others, urge the MOH to ensure compliance with the regulations governing supervisory services; to establish sanctions for non-compliance; to provide for the systematization and homogenization of the sector-specific regulation of the operation of such services; and establish a coherent regulation for adolescents to access HIV health services.

As part of the monitoring of the formulated recommendations, the Ombudsman began a new project in 2010, also financed by the UNDP: "Incorporation of the human rights perspective in the response to HIV/AIDS." This project enabled the realization of important actions, including:

- **Implementation of the "Inquiry System on HIV-related Regulations"**

The "Inquiry System on HIV-related Regulations" was designed in response to problems in the provision of HIV-related services, primarily that health establishments and their personnel do not fulfill their legal obligations, as well as the dispersion of regulations and the absence of systematic rules. Its goal is to contribute to appropriate diffusion of HIV-related regulations in order to overcome the problems arising from the lack of organization and systematization of these rules.

- **Second supervision of the HIV prevention, care and treatment services**

In order to measure the progress of the implementation of the recommendations included in Public Defender Office Report N. 143, a second supervision of health establishments was undertaken in 2010. The results of this supervision will soon be published, but preliminary data shows progress in the implementation of legal devices regulating the provision of HIV-related services.

It should be noted that all of the above activities have been accompanied by responses to complaints, petitions and inquiries by the Ombudsman's offices nationwide, constituting a permanent and central effort of the Ombudsman. It has been possible to guide citizens on HIV-related issues, generate a greater impact on the subject, and, mainly, to reverse situations affecting the rights of people affected by HIV.

## **RESULTS AND IMPACT OF PUBLIC DEFENDER INTERVENTION**

- Through the activities realized in the initial years, bases were laid for the permanent and sustained work of the Ombudsman in defense of the rights of PLWAH and vulnerable people, through the supervision of the implementation of Public Administration obligations.

- Strengthening of the internal capacity, which reflects an increased institutional intervention in subject-related actions. Also important is the increase in the number of cases related to HIV/AIDS human rights violations processed by the Defender's Office in the last couple of years. There were 26 HIV/AIDS-related cases from 2002 to 2006 at the national level, 71 cases just in 2007 and 244 cases in 2010.

- Contributions have been made to empowering organizations of PLWHA and vulnerable people, and communication vehicles with these groups have been expanded for the timely intervention of the Ombudsman in the affection of their rights.
- The intervention of the Ombudsman has been consolidated in the State response to HIV, becoming a reference for human rights and HIV-related issues, and for the emission of regional regulations in favor of PLWHA and vulnerable people.
- The experience acquired on the subject has enabled the Ombudsman to implement tools to promote the HIV/AIDS issue from a human rights perspective in the National and Human Rights Institutions, as in the virtual course "The role of the Ombudsman in the response to HIV", for personnel of the Ombudsman of Ibero-America.

#### References

<sup>1</sup> In agreement with the provisions of article 162 of the Political Constitution of Peru, the Ombudsman is responsible for protecting the fundamental rights of people and the community, as well as supervising the implementation of the state administration duties and provision of public services to citizens.

<sup>2</sup> [http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe\\_143](http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe_143)

<sup>3</sup> <http://sistemavih.defensoria.gob.pe:8081/nlvih/>

<sup>4</sup> Complaints, petitions, inquiries

56 **Brasil**

**Individual**

Brazil is one of the countries viewed worldwide as a model for recognition of human rights as fundamentals rights. This can be confirmed in the Federal Constitution of 1988 and through the extensive governing infra-constitutional legislation in the country.

Although on one hand we have legal documents recognizing these rights, little has been implemented in the operation of the institutional structures (private or state) corresponding to the determination of laws dealing with human rights.

Therefore, the interpretations that reinforce the idea that Brazil is advancing towards the crystallization of democratic values in a satisfactory manner are seen as superficial and mistaken if formulated by subjects who have never experienced the daily reality of this country's vulnerable populations, limiting themselves to *official* speeches and statistics.

However, we do not want to underestimate the necessity of the formal recognition of human rights through legal channels, particularly in relation to vulnerable populations. In this respect, Brazil has made significant progress in recent years. Specific examples are illustrated below:

Despite the Maria da Penha Law (n.11.340) that focuses on decreasing violence against women in Brazil, the State has been unable to effectively implement the law since its enactment four years ago. There is still no internalization process for the caregivers; no specialized jurisdiction for domestic violence. In summary, there is no infrastructure for the security and the wellbeing of the woman.

Free legal advice from GAPA-BA for people living with HIV/AIDS (PLWHA) and the vulnerable populations make it clear that there is a difference between legislative recognition of rights and their effective protection. The level of violation is so extensive that, for example, although the administration of an HIV test is prohibited for professional or educational admission, State institutions (police, military and military schools) require the test as part of the selection process. This is an example of the State's consistent practice of discrimination and criminalization of PLWHA, among others that could be cited.

Despite the existence of a Unified Health System (Law n 8.080/90 and Law n. 9313/96) - the legislative frameworks guarantees citizens the pursuit of their right to health, above all else for PLWHA – that establishes universal and equal access to the health system, it is common that people must routinely pursue legal recourse to achieve compliance with legal regulations as a result of the scarcity of medicines and the fractionation of antiretrovirals (ARVs).

In 2010, the Brazilian government intensified its HIV test offers as essential in preventing late diagnosis. There is still not an appropriate health system for ambulatory care, people who are HIV-positive, which generates a repressed demand for medical assistance (eight months for a clinical consultation, leading to abandonment of treatment) poor quality care and ARV shortages.

To this end, we can site the apathy of Public Administrators (Executive Power) in relation to health care services specific to PLWHA such as lipodystrophy services, surgical procedures for reducing the physical strain of the collateral effects of ARVs and the actions of the virus within the body, which constitute stigmas that can be physically seen and involuntarily displaying HIV status, exposing them to discriminatory situations.

The inability of the Administrators has implications not only in the health care for PLWHA, but also for all of society, violating and compromising the budgetary and financial stipulations specifically instituted for AIDS-related public policies and destined for prevention, diagnosis, communication, human rights and support for the social movement against AIDS.

The legal procedures attempt to stimulate the Public Administration to act in accordance with the legal and constitutional regulations on the right to health. In this aspect, despite the incompetence of the administrators, the judges will take measures to affirm the State's commitment to the right to health.

This situation creates an institutional crisis, including the state institutions (Judicial Executive X), in that there is no consensus on the guarantee of rights, mainly in reference to PLWHA. This is evident in the non-compliance of Public Administrators with judicial decisions in favor of PLWHA.

The GAPA-BA does not reduce access to justice through its provision of judicial assistance, promoting other actions in popular legal education, creating spaces for the diffusion of human rights awareness, along with PLWHA, creating conditions of self-determination in the face of human rights violations.

It is worth mentioning the attempt to regulate the obligatory test for conjugal visits in prison, which was prevented through political advocacy by civil society, and then ignored by the Public Administration entities. On the other hand, social control through Public Audience is being developed and expanded, enabling direct dialogue between State representatives (MPs, judges and administrators) and civil society. This dialogue highlights the problems and errors related to public policies for vulnerable populations (women, PLWHA, LGBT and youth), where all participants are dedicated to the construction of responses to social practices that generate situations of vulnerability.

In this context, it is clear that human rights violations and inequality seriously persist in Brazilian society, where PLWHA and other vulnerable populations continue to be oppressed and silenced, in particular by the State, the principle violator of human rights in our context.

## HIV transmission is a matter of Public Health, not of Criminal Justice

The response of the Brazilian government to the HIV epidemic is based on human rights, universal access to treatment and prevention. It is estimated that there are 650,000 people living with HIV/AIDS in the country, 200,000 of which are taking antiretroviral treatment.

Brazil does not have a penal law that specifically criminalized the sexual exposure (sexual relations without infection) and the sexual transmission of HIV, but its **Penal Code** allows for the interpretation of these acts as **homicide, personal injury or criminal damage**.

Beginning in **2000, consensual sexual activity of a person living with HIV, without a condom** and without revealing his HIV-status, whether or not HIV infection occurs, was considered by investigators of criminal law, delegates in their charges, prosecutors in their accusations and judges in their rulings as **manslaughter or attempted homicide by insidious or vicious means**.

An Internet search of Justice Courts in three Brazilian states (Rio de Janeiro, Rio Grande do Sul and Sao Paulo) identified ten convictions in cases of consensual sexual relations of people with HIV/AIDS. Brazil's criminal justice, considering AIDS as a serious, incurable and lethal disease and using the Penal Code (PC), has interpreted the sexual transmission of HIV as:

1 – **Serious bodily harm** as a result of the transmission of the curable disease (two cases), Article 129, second paragraph, II, PC.

2 – **Injury resulting in death** (one case) Article 129, third paragraph of the PP.

3 – **Attempted homicide** (one case)

4 – **Manslaughter** (four cases)

**Sexual exposure to HIV** was seen as a **crime** that endangered the **life** or **health** of others (two cases): Article 132 of the PC.

On October 5, 2011, five **Supreme Court** judges ruled on habeas corpus no. 98712 and decided that **sexual transmission** of HIV to two women was not attempted manslaughter and that **sexual exposure** (attempted forced sexual intercourse that was not consummated) of a third woman to the AIDS virus did not constitute attempted murder. According to the Supreme Court, these two cases of transmission and one related to sexual exposure to HIV, can be interpreted as crimes through **article 131 of the PC (endangerment of infection with a serious disease)**. As such, the Sao Paulo State jury's decision was annulled and the judge set a new trial. The problem with accepting the theory of endangerment of infection with a serious disease, as defined in the Penal Code, is that it allows us to interpret a sexual act, without the presence of HIV infection, as proof of intent to transmit the serious disease and a committed crime, regardless proof of infection. This logic, in our view, violates the constitutional principle of presumption of innocence, due process, legal defense the right to be heard.

Women presented **eight criminal cases** against men. Two young men committed a criminal act against a transvestite, and in another case, the family of a man who died from AIDS filed a suit against a woman, a former sex worker.

This last case should be highlighted. This woman was convicted for **injury resulting in death**. The **accusation** was based **solely** on **witness statements** (the man said that he had been infected by the accused + the victim's ex-wife + the victim's brother+ the victim's cousin + the sister of the accused), and the investigation of the accused testified to the death of the victim, stories of betrayal by the accused and infection of other men. There was no presentation of technical evidence based on scientific data that confirmed the transmission of the virus. The proof of intent to injure and proof of certainty of authorship were not thoroughly examined and, with reasonable doubt, she was sentenced instead of being acquitted.

**This occurred even though the preamble to the Brazilian Penal Code recognized the difficulty, if not the impossibility, of demonstrating the responsibility for other STD-related crimes.** However, in all criminal cases, it is important to conduct **technical evaluations (medical and statistical calculations** to determine probability of infection) and not solely rely on oral evidence presented by the prosecution. This study shows how **the Brazilian criminal justice process** in cases of accusation and conviction for HIV transmission fails to meet the technical requirements of a criminal offense. It rather resembles a procedure of inquisition.

Beyond the existence of several criminal convictions, since 2002, Brazil's Chamber of Deputies has planned a draft law No. 4887/2001 to punish the deliberate transmission of incurable diseases (for HIV and other diseases) with 10 to 15 year prison sentences if the infection does not result in death, and prison terms of 20 to 30 years in cases of death. The draft law also provides for sanctions for the negligent transmission of an incurable disease regardless of death.

From our point of view, the interpretation of the sexual act of a person with HIV without a condom, as proof of intent to kill or other criminally reprehensible intention, is strict criminal liability (forbidden under criminal law in Brazil.)

The indictment on attempted homicide or manslaughter is a strict criminal complaint, prejudicing and discriminating against (exclusion) of people living with HIV/AIDS.

To correct this distortion, the rulings must comply with the constitutional principles of due process and an extensive defense and hearing, establishing exhaustive proof of the reasons that led to the intent to transmit the virus and for proof of authorship. The alleged victim must present, among other tests, a negative HIV test received prior to the relationship with the accused. The mere consummation of sexual relations without a condom should not in itself establish intent to transmit HIV or any other criminally reprehensible intent: harm, transmission of venereal diseases, and transmission of serious diseases or misconduct leading to endangerment (risk of injury).

By engaging in sexual relations without a condom, the person living with HIV/AIDS is not necessarily acting with the intent to endanger, harm or transmit STDs, serious illness or HIV, nor do they necessarily have the intent to kill. Admitting that the person with HIV/AIDS, by engaging in sexual relations without a condom intended to commit a criminally reprehensible act, represents a discriminatory act by the State and Justice. It **stigmatizes a person living with HIV/AIDS** as a criminal and a danger to society.

In addition, the Brazilian social movement rejects the claim that exposure to AIDS and sexual transmission of HIV is attempted homicide or manslaughter because today **infection is not a death sentence.**

**People living with HIV/AIDS have sex for pleasure, passion, love, social pressure, money, etc. just like people who are not infected with HIV/AIDS.** Nevertheless, Brazil's criminal processes dehumanize people living with HIV/AIDS, interpreting that sex without a condom can only mean intention to transmit HIV and no other desire. The **criminalization of sexual exposure and sexual transmission of HIV generates a negative impact** on the **prevention** and the **treatment of AIDS** because people stop getting tested since not knowing that one is HIV positive is an excellent defense against accusation of the crime of intentional transmission.

Lastly, **it is important** to ask oneself if it is **appropriate** and **adequate** to use the penal law as an educational tool in inhibiting or modifying sexual practices instead of using **education** to inform society about measures that may be taken to **prevent** the spread of the epidemic.

Our intention is to briefly explore the experience of a group of non-governmental organizations that work together in the field of public health, AIDS and intellectual property in Brazil. This is the Working Group on Intellectual Property (GTPI in Portuguese) of the Brazilian Network for the Integration of the People (REBRIP in Portuguese), of which Conectas Direitos Humanos has been a member since 2005.

The intensification of intellectual property regulations in the last year has directly impacted public health and the population's access to medications. This new global regulation requires new communication efforts for an effective response to society. Brazil pays a high price for its decisions (and compulsory adjustment as a result of international treaties) in terms of intellectual property legislation. These laws have an impact on public policies in the technological and industrial sector and effectively interfere in public health policies. On the other hand, there are preventative measures that may be used to minimize the negative affects of the patent system regarding access to medications. The GTPI implements these measures in the Judicial, Legislative and Executive branches.

The following actions should be highlighted: (a) public civil action in the issuance of compulsory licenses, (b) grants for patent examinations in the national patent office, the National Institute of Industrial Property (INPI in Portuguese) and the nullification of patents, (c) legal opinions and position papers on issues relevant to intellectual property, (d) representation of the Attorney General on the constitutionality of pipeline-issued patents which resulted in the implementation of Acción Directa de Inconstitucionalidad 4234, (e) investigation of national and international laws, draft laws and patent systems and registry of medicines in Brazil, (f) public campaigns, (g) joint activities by organizations of the Global South (Sur Global), and (h) presentation of cases before the Permanent People's Court (TPP in Portuguese) regarding human rights violations by transnational companies in Latin American countries.

Due to limited space, it will not be possible to address all aspects. Therefore, we highlight certain significant points, which we hope to explore further<sup>1</sup> in the meeting:

#### **(a) Public civil action in the issuance of a compulsory license**

The compulsory license is one of the protective measures that may be used to minimize the negative effects of the patent system on health policies.

In 2005, the GTPI introduced a civil action that sought the concession of a compulsory license for the Kaletra medication (lopinavir and ritonavir), fabricated by Abbott Laboratories. At the time, the purchase of this medication represented approximately 30% of the National STD/AIDS Program's total spending on medicine, putting its sustainability at risk. The cost of the medicine led the Brazilian government to negotiate with the laboratory. As a result of a frustrating attempt to reach an agreement to reduce the prices, the Health Ministry declared that Kaletra was of public interest but later signed an agreement with the laboratory, and the compulsory license was not issued.

After the signing of the agreement, the GTPI, in conjunction with the Federal Public Ministry, presented an unprecedented civil action<sup>2</sup> against the government and Abbott, demanding the issuance of a compulsory license for lopinavir / ritonavir. A favorable decision would enable the local production of a generic version of the medication. The judge denied the compulsory license arguing that it could lead to retaliation by developed countries, the possible shortage of medicine and the absence of national production capacity to produce the medicine. The GTPI and the Federal Public Ministry appealed the decision and are still awaiting trial.

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<sup>1</sup> For a more detailed analysis of these actions, read: Access to medications and intellectual property in Brazil: experience of civil society. Intellectual property rights and access to antiretroviral medications: the resistance of civil society in the global south. ABIA: Rio de Janeiro, 2011. Available at: <http://www.deolhonaspaspatentes.org.br/media/file/Publica%C3%A7%C3%B5es/Livro%20verde%20%28baixa%20site29.pdf>

<sup>2</sup> Case No 2005.34.00.035604-3, Tribunal Regional Federal da 1ª Região.

## **b) Grants for the examination of patents in the INPI and patent nullification**

The GTPI also used administrative channels to prevent improper granting of patents for essential medicines with the national patent office (INPI). Four grants for patent examination were presented: 1) request for a second patent for the lopinavir-ritonavir combination (Kaletra) requested by Abbott (PI 1101190-4), ii) a patent application for the tenofovir disoproxil fumarate (Viread) requested by Gilead (PI 9811045-4), iii) divisional patent application for tenofovir desoproxil fumarate (Viread) requested by Gilead (PI 9816239-0), iv) patent application for the Truvada medication (PI0406760-6). The granting of patent examinations is a provision of Brazilian law that allows any interested party to submit information to assist in the examination of a patent application by the INPI.

The submission of the grant for examination to the INPI sought to present technical arguments for the denial of patent applications for antiretroviral drugs. The patent applications for these medications were questioned on the basis of different arguments, demonstrating non-compliance with patent requirements (novelty, inventiveness and industrial application). It is important to note that, with the exception of Truvada (not yet reviewed), all of the grants were successful and their arguments were rejected for non-compliance with legal requirements. The systematic denial of drug patents can bring them back into the public domain, avoiding the need to issue a compulsory license and the practice of monopoly pricing.

In mid-2007, the GTPI organizations also filed an action for the nullification of patents, questioning the validity of a patent granted to a diagnosis kit<sup>3</sup>. This action is still in the early stages in the courts.

## **(c) legal opinions on position papers and the participation in public hearings**

Another work area of the GTPI is the preparation of legal opinions and position papers on questions of intellectual property and their impact on public health. The GTPI has arranged to send position papers in all cases in which discussions could negatively affect health matters. They have recently finished an extensive study that maps the Brazilian legislature, identifying draft laws in favor and against public health in the intellectual property field (3). A series of bills are being proposed in the Legislature, that if approved, would mean the adoption of measures in Brazilian law that are more detrimental to health than those established by international agreements (known as TRIPS-plus) or the exclusion of measures to protect public health (known as flexibility). The GTPI monitors the advances of these bills, developing opinions that are sent to all participating public ministries and participate in public hearing called by the ministries to address issues raised by the draft laws. Finally, in addition to these contentious actions, the GTPI also submits reports and participates in public hearings in the judiciary.

## **d) Complaint against the reestablishment of the patent mechanism known as pipeline**

In late 2007, the GTPI presented a petition to the Attorney General's Office that demonstrated the unconstitutionality of the patent granting mechanism known as pipeline. The petition requested that the Attorney General join the direct action of unconstitutionality (ADI in Portuguese) in opposing the pipeline before the Federal Supreme Court, since civil society organization do not have the standing to present this type of action.

The pipeline mechanism is a temporary provision through which existing patents were accepted in technological environments, and for which Brazil has not yet granted patents, including pharmaceutical and food products. The pipeline patents violate the Federal Constitution by granting patent protection already in the public domain, violating rights acquired by the community. In addition, it also violates the reasons for which the Constitution mandated the protection of intellectual property, since it does not fulfill the economic and technological interests of the country. Therefore, there is nothing to justify its concession. The GTPI decided to question this patent

<sup>3</sup> Case N º 2007.51.01.810349-6, 38 º Juzgado Civil de la Corte Federal de Río de Janeiro.

granting mechanism on judicial grounds due to the significant impact of pipeline patents in Brazil. In May 2009, the Attorney General's Office joined IDA 4234<sup>4</sup>, questioning the constitutionality of pipeline patents. The lawsuit is pending in the Federal Supreme Court.

59 Chile

**Fundación EPES y Observatorio de Equidad de Género en Salud (OEGS)**

The Popular Education on Health foundation (Educación Popular en Salud, EPES) is an NGO dedicated to the prevention and promotion of health in communities from the cities of Santiago and Concepción over the past 29 years. EPES promotes strategic actions of education and organization from a gender and human rights perspective, to tackle issues relevant to women's health such as gender violence, specific vulnerability of women to HIV, sexual health, breast cancer, etc, by promoting the development of a comprehensive and cross-cutting approach. EPES is part of the Observatory of Gender Equality on Health (Observatorio de Equidad de Género en Salud), a national association conceived as an instrument of citizenship surveillance, for the monitoring of public policies through the analysis, production and dissemination of information regarding indicators and matters of gender equality. The Observatory body consisting of 40 organizations, which develop participatory processes to establish priorities of monitoring and analysis, from the experiences of said organizations. Sexual and reproductive health and gender violence are among priorities.

In the last ten years, there have been improvements in legislative changes and in the implementation of sectoral programmes and policies dealing with domestic violence against women. However, the country does not have the necessary laws to tackle gender violence in a consistent manner, and lacks a comprehensive and cross-cutting national policy that guarantees an effective response. Violence constitutes a serious infringement of women's human rights a public health problem, and the State has to fight it with the participation of civil society in general, and the participation of women's movement's organizations in particular.

The discourse, policies and programmes do not translate into effective and consistent practices for the prevention, care, protection and reparation for women and children affected by violence, and this is due to the fragmentation of policies, the lack of resources to implement them, and the difficulties to establish mechanisms that provide cross-cutting responses. The result is a serious failure to comply with the international agreements signed by the Chilean state to guarantee the rights of women and eradicate violence.

The 2009 report of the Observatory of Gender Equality on Health shows a reduction in the indicators of Gender Violence, pointing out that the "comprehensive and cross-cutting actions that were proposed don't have the appropriate budgetary provision, nor the regulatory and procedural support necessary to guarantee their implementation in the right conditions of quality and opportunity". "There are no official records of women murdered by their partners, despite the high frequency in which these murders keep happening". "There is an increase in the number of births to mothers under 15 years of age". "From 2003 until present day, there is no available information on the public funds destined to provide care for domestic violence against women over 15 in the health network". "From 2003 until present day, there haven't been any initiatives to create a statistics record on women affected by domestic violence". "There are no advances in the quality of care for victims of sexual attacks, whether they are children or teenagers" (pg. 60).

The public response to the problem of domestic violence does not correspond to the gravity of the situation. Studies carried out in some parts of the country show an increase of 35% to 55% in the complaints regarding situations of violence, a consequence of the judicial system's failure to provide protection. This failure becomes evident in the significant amount of women murdered regardless of the protective measures, as well as in the proportion of judicial

<sup>4</sup> For more details on this investigation, see: <http://www.deolhonaspantentes.org.br/media/file/seminario%20abril%202011/Marcela%20Vieira%20-%20legislacao.pdf>.

cases that end up without a sentence. The result is that women have no access to justice and the assailants enjoy impunity.

Gender inequality and discrimination is evident in Chile: low insertion of women in the labour market, precarious work without social security, lower income than men, low political representation, high rates of poverty, a denigrating and exploitative use of the female body and image by the advertising industry in the media, etc. These are some indicators of a context that favours the infringement of women's human rights, their sexual and reproductive rights in particular.

The reality of women's social inequality and the cultural constructions of gender result in all kinds of violence against women and increase their vulnerability to STDs and HIV/AIDS. Even though this situation should be obvious for people working in the health sector and care services, there are no policies or programmes in the country to deal with the problem.

A research on women currently living with HIV/AIDS, carried out under the framework of the project "Two sides of the same reality, Violence against women and Feminization of HIV/AIDS", which took place in Argentina, Uruguay, Brazil and Chile to promote policies focused on HIV and violence against women, provided quantitative evidence on the link between these two pandemics. In Chile, 61.8% (63) of 102 women living with HIV who participated in the study declared to have suffered or still suffer some type of violence. A total of 57 women were victims of violence before being diagnosed with HIV (56%), the incidence of all types of violence among them almost doubling the average of the study, with the following results: emotional or psychological damage affects 80.7%, physical violence 50.9%, sexual molestation 42.1% and rape 24.6%. Among the women that suffered violence before being diagnosed with HIV, 59.0% suffered multiple violence, that is, they experienced two or more types of violence.

With regard to the use of contraceptive methods among HIV+ women who have sexual relations and use these methods, condoms is the preferred option (71.2%), although their use is intermittent. The second preferred method is surgical sterilization (28.79%), among them 6 young women from 25 to 34 years of age who had tubal ligation. This is relevant information, since the percentage of female sterilization is 9.8%.

The care services for people living with HIV have improved in Chile; the women interviewed stated that they didn't have any problems accessing HIV-related services and treatments. However, there were incidents of institutional discrimination and violence recorded in the study, in those health care services not exclusive to people with HIV, with practices that infringed the access to health care in conditions of full equality, the right to confidentiality and a respectful and quality service. The incidents were: refusal of care services, extension of waiting hours for being HIV positive, unnecessary measures of isolation, pressure to accept sterilization (even without consent), and other practices at odds with the regulations established by the Ministry of Health and the basic human rights of women. It is worth pointing out that two women who participated in the study declared that sterilization was forced upon them; these were cases of women with low educational level who suffer discrimination because of their gender, class, and HIV+ condition.

After studying the results of documentary sources, workshops, and a collection of records from users of health services and services for people living with HIV/AIDS, EPES, Acción Gay, Vivo Positivo and MLCM+ (Latin American and Caribbean Movement of Positive Women) concluded that: the investment for prevention and treatment is minimal; implementation of gender perspective and sexual and reproductive rights in the health programme for women is insufficient; the ELISA test is not promoted among non-pregnant women; policies on sexual and reproductive rights for women living with HIV/AIDS are inexistent, as well as care and HIV prevention programmes for teenagers; the institutions are incapable of comprehensively dealing with situations of exploitation, drug addiction, and sexual molestation suffered by children and teenagers; there are no services of sexual and reproductive rights for men; the system doesn't consider the transgender community as worthy of rights. It is also concluded that there are limitations in the incorporation of gender perspective in the current regulations, since the restrictions associated to gender constructions and violence are not considered explicitly.

### The story of Juan and the dilemma of living with HIV in health centres of Guatemala

We tend to think that discrimination is a word that has disappeared from our vocabulary, whether it's discrimination by sexual identity, gender, race, social status, etc. However, discrimination regains the full extent of its meaning when it comes to people living with HIV.

That is the case with “Juan”, a fictitious name used to protect the integrity of the real person, who has been living with HIV for around 13 years. In 2007 his health started deteriorating, despite having regularly taken his antiretroviral drugs and not necessarily because of HIV. He went to the Guatemalan Institute of Social Security (IGSS), because he had been suffering from sinusitis for a while, probably as a consequence of an illness from childhood. (As an IGSS beneficiary he has the “*Right*” to use all the services provided by that institution). After telling the doctor who treats his HIV infection (by treatment I mean to weigh, take blood pressure and give out medicines, as part of what they call Centre of Comprehensive Care (Centro de Atención Integral, CAI), although the word “comprehensive” escapes my understanding here), he was sent to “*Otolaryngology*”, to treat a sinusitis which was by now turning into something chronic: after various tests, consultations with different doctors, antibiotics, more tests, and more antibiotics, 6 to 9 months had passed. After two years of trips to the health centre, he finally got an appointment for an operation at the IGSS, supposedly a simple intervention that would only require one morning, and after which he would be sent home to rest. When the date for the operation was fixed, 3 years had passed from the day the sinusitis was diagnosed, so he decided to say goodbye to his family, close friends, boyfriend, etc. After having seen so many doctors none of them wanted to take responsibility for his situation (although they didn't admit it, it was obviously because of his HIV condition).

The day of the operation, Juan was feeling confident. He showed up at the hospital at 4 in the morning with an empty stomach, as instructed by the doctors because of the anaesthetic process. He was admitted at 2pm and scheduled for an operation the next day. Determined to put an end to the ordeal that had been going on for years now, he skipped lunch, dinner and breakfast. When the time came and he was being transferred to the operating room, the surgeon read his medical records and found out that the patient had HIV, written in the chart with huge red letters. The operation was cancelled right away, and the patient declared unfit to undergo surgery. All the appointments, consultations, antibiotics, prescriptions, tests, etc, that had been piling up for years went down the drain, just because the surgeon refused to operate without giving any explanations. He was checked out and told to continue visiting the clinic for more treatments, because he didn't need an operation anymore.

Disappointed and depressed because no one could put an end to a problem that had persisted for years, he went back to the clinic a week later. When the doctor asked him about the operation, he was shocked to hear that it had been cancelled, and furthermore, there were no actual reasons as to why he was declared unfit, only a few pretexts and excuses, even though the decision to operate was taken by the doctor who had treated the sinusitis in the first place. Juan was not able to give his doctor a reasonable and logical explanation, and he could only repeat what he was told: to continue with his treatment and wait for an improvement. After 3 years of trying to get rid of a simple sinusitis, he found himself back at the beginning.

The conclusion to this story of back and forth trips to the health centre is that people with HIV are treated, and will always be treated, as second, third, fourth, fifth class people, or even lower. The doctor who was supposed to perform the operation was clearly not sensitive to the problem of HIV; despite being a pandemic discovered more than 25 years ago, some doctors still discriminate and refuse to perform surgery on a person with HIV because they are afraid of what might happen to them. They don't care about the lives of people with HIV, even though the health sector has been made aware of the epidemic more than any other, and its personnel trained on security, contagion, opportunistic infections, etc. Instead, health centres and the so-called Centres of Comprehensive Care keep on discriminating people with HIV. What can be expected of the administrative

personnel, lab technicians or nurses, when their superiors blatantly discriminate whoever they please whenever they want.

Juan still suffers from chronic sinusitis, tries to avoid getting wet or staying in cold places, and takes home-made remedies because the IGSS didn't even deign to continue with his treatment. He still hopes that one day he will save up enough money to cure his sinusitis in a private centre, seeing as it is impossible to receive proper attention through the social security system.

This is a true case of discrimination suffered by a person with HIV. Police officers are not always the ones to blame for the humiliations; the people in charge of our health do it too. Even though in Guatemala there is a Legislation which protects people with HIV, a Public Policy, a Global Fund project, awareness-raising campaigns for the population, a National AIDS Programme, and the necessary instruments to prevent things like these from happening, discrimination is still frequent and happens every day. Unfortunately, this is the only story I can tell you to prove it.

61 Dominican Republic

Dominican Network of People Living with HIV (REDOVIH)

### Executive Summary

1. The Demography and Health Survey (ENDESA 2007), shows that 0.8% of people in the Dominican Republic are living with HIV. From a socio-economic perspective, HIV and AIDS constitute a breeding ground for the infringement of human rights of people living with HIV and their families.
2. Title Nº 1, REDOVIH+, informs about the National Health System, the Dominican Social Security System, the legal framework, the Rules and Protocols of the right to care for people living with HIV, and the situation of HIV and AIDS in the workplace and the legal framework, in relation to the accessibility and opportunity for employment of people living with HIV.
3. Title Nº 2, REDOVIH+, informs about the promotion and protection of human rights of People Living with HIV (PLWH), about the refusal and humiliations suffered by PLWH when trying to access health and work.
4. Title Nº 3, REDOVIH+, informs about the Identification of improvements, good practices, challenges and contrasts in relation to HIV/AIDS and human rights.
5. The Dominican Republic is a signatory country of the Declaration of Commitment on HIV/AIDS (United Nations General Assembly Special Session), which defends human rights and fundamental freedoms of people living with HIV. The country made a great effort to react to the socio-economic context that generates HIV and AIDS, but there are still many weaknesses with regard to human rights, despite the protocols and rules, a legal framework to protect the right to health and work (Law 55-93 on AIDS under reform), and the recommendations and agreements signed with the World Health Organization and the guidelines of the International Labour Organization.

### Constitutional and Legal framework in the Dominican Republic

6. The failure to comply with the existing Rules and Protocols also affects human rights. Law 55-93 was passed in the Dominican Republic to prevent the social stigma and discrimination caused by HIV/AIDS and protect human rights (even though the transmission of HIV is a criminal offence according to this law). Failure to comply with the Rules and Protocols of Care and the law 55-94 on AIDS and Social Security limitations on HIV and AIDS.
7. 30 years after the appearance of the Human Immunodeficiency Virus, with all the human and financial resources, researches and advances in the subject, there are still cases of refusal of access to health services and opportunity to work, due to social rejection and the lack of awareness-raising. REDOVIH thinks that the Dominican Republic is behind the times with regard to effective improvements.

8. It is unconceivable how the National Health System (in the provision of care for PLWH in cases of medical-surgical interventions, haemodialysis, endoscopy, colonoscopy, and sexual and reproductive health) and the Dominican Social Security System still fail to comply with the laws and regulations, which according to REDOVIIH+ is resulting in very negative effects in the health of PLWH.
9. In relation to work environment, REDOVIIH+ demands and inquiry on the implementation of the HIV detection test without informed consent, and as a determinant in the employer's decision to hire or fire employees.
10. Article 8 of the nation's Constitution institutionalizes the principle of human rights of all the population. The Dominican Social Security System provides every citizen with protection in cases of diseases, disability, dismissal for age, maternity, work risks, etc. regardless of their socio-economic condition. It is universal, and therefore non-exclusive.

### **Promotion and protection of Human Rights in the country. Refusal and humiliations in the Health Services and Accessibility and Opportunity for Employment**

11. The National Programme of Comprehensive Care on HIV and the National Programme for the Reduction of Vertical Transmission, mother-to-child, are part of the National Health System but don't have any connection with the rest of services provided by it.
12. The Dominican Social Security System ignores the "Universal Access to Antiretroviral Therapy" international agreement, contradicting its own Universal and Mandatory principles of Integrity, Equality and Solidarity.
13. The study Index of Stigma and Discrimination of PLWH, with 1,000 participants, reached the following results with regard to sexual and reproductive health: A health care professional advised you not to have children after being diagnosed with HIV+: 23.2%; A health care professional coerced you to undergo sterilization after knowing that you are HIV+: 11%; There are cases of pregnant women with HIV+ under medical monitoring by the National Programme for the Reduction of Vertical Transmission, and after giving birth the treatment protocol was cancelled without informed consent, increasing the risk of the child developing HIV+.
14. There are complications and difficulties in the medical-surgical processes, as is the case of Mrs María Magdalena Pérez Delgadillo, who after a car accident faced many obstacles and eventually was refused medical attention in the Darío Contreras Hospital. We filed a public complaint to help Mrs Pérez Delgadillo get the surgical intervention she needed.
15. The study Index of Stigma and Discrimination of PLWH, with 1,000 participants, reached the following results with regard to the work situation of PLWH: Employed full time: 17.7%; Employed part time: 13.4%; Self-employed full time: 11%; Self-employed part time: 14.7%; Unemployed: 43.2%. Discrimination at work is an ordeal for PLWH, and limits their right to work, restricting the social and human development of people with productive capacities and abilities, affecting individuals and families, as well as the nation.
16. Some companies have their own clinical laboratories. Public and private laboratories that perform HIV tests without the informed consent of the subject, as requirement to access a job or remain working, are infringing the HIV regulations and national policies. Mr Juan García was told to take the HIV test, and 72 hours later he was fired.
17. All these situations and bad practices hinder the accessibility and opportunity for employment of PLWH, affecting human development in the access to a job or permanence in it, and questioning the social responsibility of certain companies with regard to the prevention and treatment of HIV.

### **Identification of improvements, good practices, challenges and contrasts.**

18. With regard to the health sector, the Dominican network of People Living with HIV sued the Dominican State before the Inter-American Court of Human Rights, for failing to comply with its social obligations in protecting human rights.
19. The Citizen Oversight of STDs and HIV/AIDS Programme, promoted by the State and coordinated by

PLWH, and following UNAIDS recommendations on the importance of the involvement of affected people, is an indicator of the good practices on the social monitoring and control of HIV/AIDS.

20. Affiliation of People Living with HIV with the State's National Health Insurance (SENASA).

## Conclusions

21. The inquiries and penalties on the violations of human rights of PLWH is a great challenge for the Dominican Republic. The State, the public and private institutions and the civil society are committed to reducing the State's debt with regard to the infringement of human rights of people living with HIV and AIDS.

### Sources of consultation and verification

1) Index of Stigma and Discrimination of PLWH, Dominican Association for the Promotion of Family Welfare (Profamilia), Institute of Population and Development Studies (IEDP). Sponsored by GTZ IPPF.

4) hoy.com.do

5) <http://www.arssenasa.gov.do/noticias.asp?sid=227>

6) <http://www.traslaverdad.net/article.cfm?articleID=46047>

2-7) dias.com.do (February 25<sup>th</sup> 2008), [perspectivaciudadana.com](http://perspectivaciudadana.com)

62 Mexico

Fundación VIH...ctoria A. C.

## Legal framework of meeting spaces for MSM (Men Who Have Sex with Men)

There has been a lot of talk about the contextual and cultural characteristics that put MSM in a condition of vulnerability to HIV. A series of actions have been implemented in order to prevent contagion of HIV and STDs, which infection rates are increasing not only among males but also among women who have some sort of contact with this community.

Whether we refer to MSM as heterosexual or homosexual males, inmates who have same-sex intercourse, or men who have contextual or circumstantial sexual encounters with people of the same sex, the majority of MSM meet in conditions of secrecy and imminent risk, in places without guarantee of physical, emotional or personal security.

In addition, there are other facts: the cultural and generic role of power, the domination of the other as part of the sexual role, the lack of contraceptive methods, the use of drugs for stimulation, escapism or to mitigate the guilt, etc. These factors have to be taken into account when developing a regulation that guarantees the rights of prevention, health and safety for the users of these meeting places.

Several researches and studies on targeted groups refer to legally regulated spaces such as saunas, public baths or adult cinemas, where people of the same sex meet to have sexual encounters. The places themselves are regulated, but not the behaviours and practices that occur inside, so legally, these spaces are not considered meeting places for MSM.

Therefore, the authorities only supervise structural and administrative aspects that ensure the proper running of the establishment, such as land use, civil protection, health, opening hours, etc., ignoring the social importance of the place has as a meeting centre for this community.

The owners don't identify their establishments as places where "social commitments" have to be put into effect, to promote practices that prevent the infection of HIV/AIDS, the use and abuse of alcohol and drugs (marihuana, cocaine, MDMA, poppers, etc.), and the use of condoms for prevention.

Other places for sexual encounters are the bars and clubs for the LGBT community. Here there is inclusion and less risk for MSM, and the places are regulated by commercial codes. However, there are also established patterns of cases that add up to the increase of HIV/AIDS infection rate. The main detonator of these cases is the consumption of alcohol and drugs among the clientele, which facilitates interpersonal relations and subsequent sexual intercourse, normally in the house of one of the customers. It's widely known that these are not safe sex practices and the use of condoms is seldom, furthermore, in many occasions they result in criminal acts such as assault, express kidnapping, forced sexual relations between one or more persons, and, in extreme cases, death (hate crimes).

Even though it sounds hardly feasible and even unnecessary, there should be some sort of regulation of the behaviours and practices in these places, in order to mediate and disseminate prevention strategies to fight HIV/AIDS and drug consumption, allowing the creation of spaces that favour the sexual health of their users. In the same way that the authorities develop a civil protection plan, operating permits, etc, they should put into effect an awareness-raising campaign informing about the prevalence of infection rates among the population, as a cause of alcohol and drugs linked to behaviours that lead to HIV/AIDS infection. The efforts should include the distribution of free condoms, the inclusion of educational material and informative messages in the aforementioned regulated meeting places.

The problem with places legally regulated used by the LGBT community to socialize and have sexual encounters is that they constitute only one way to measure the problem, since there are many meeting places mentioned by MSM as established and identifiable places used to perform sporadic sexual intercourse with other men.

These places, ranging from adult video booths in sex shops, meeting places with dark rooms and "glory holes", to public spaces (public baths, streets nearby "zones of tolerance", shopping centres, public roads, cars), identified by the authorities and users because of the abundance of people and their social function, cannot be regulated because there is no legal framework to do so. However, a series of actions should be implemented to raise awareness and inform about the consequences of said encounters.

There are many cases of men extorted by the authorities for having sexual encounters in these places, threatening to tell their families if they don't pay a sum of money, denigrating the person and mocking their sexual preference. There are also the abuses and assaults of sex workers, who feel confident enough in the public areas to abuse the customers that pay them for their services. All these cases are left unsolved because there are no rights that guarantee the integrity of the victims.

We know that the Civil and Penal code prohibits and penalizes some of these socially unaccepted practices, but it should also guarantee the existence of properly regulated places of tolerance and coexistence, with a series of rules that protect the life and health of MSM, beyond the secrecy and eminent exposure to HIV/AIDS.

The biggest responsibility lies in the users of bars, cinemas, public baths, zones of tolerance and other places and how they change their behaviours and practices, but the State has to define and establish a course of action to raise the awareness of the public about the extortion, abuse, violence, discrimination and vulnerability in the conditions of life of MSM.

Therefore, it is necessary to implement legal strategies that don't limit the use of meeting places or stigmatize the behaviours and practices of their users; it is necessary to look for alternatives and raise awareness.

- a) Awareness-raising on prevention of HIV/AIDS, drug consumption, sexual violence and discrimination against vulnerable communities.
- b) Constant distribution of free condoms within these meeting places.
- c) Human rights campaigns aimed the LGBT community and MSM.

A centre specialized on the type of offences that result from a lack of regulation in places for social and sexual encounters (like the centres for criminal offences against tourists). But first and foremost, a law that regulates the meeting places, allowing their function without secrecy, with rules that guarantee the individual rights of their users, to prevent these places from becoming ghettos with constant raids and mass arrests.

It is very relevant to point out that at the time of writing this report, Quetzalcoatl Leija Herrera, president of CEPRODEHI A.C., was murdered in Chilpancingo, Guerrero; ACIFUDE A.C. activist Diego Guadarrama was arrested and sent to the Public Prosecutor's Office; and I was arrested and extorted for being inside a car with an associate. All of this happened in just 24 hours. These are only a few cases that have been brought to light, but thousands of testimonies remain unknown due to the lack of a legal framework that allows us access to places of social and sexual encounters free of discrimination, tolerant, where the health and integrity of people are guaranteed.

63 **Brasil**

**STVBrasil - SOCIEDADE TERRA VIVA**

STVBrasil is a non-governmental organization, fighting for Human Rights in the State of Rio Grande do Norte. Its headquarters are in the cities of Natal and Mipibu in the State of Rio Grande do Norte. Its services are entirely voluntary and are aimed at protecting and promoting the rights vulnerable populations, including women, children, the elderly, sex workers, homosexuals, people living with HIV/AIDS, hepatitis and other disease, and people at any type of risk of social violence.

The services include free legal advice and assistance, conflict mediation, psychological and social support for victims of violence and monitoring of cases of human rights violations.

Since 2006, an average of 1,000 people from all over Rio Grande do Norte meet annual at its Natal headquarters, including people from the Natal and Mipibu Grande region to the Agreste region.

There are an average of 300 complaints a year, the most frequent of which are related to human rights violations of women and children, attacks against gays and the neglect of the elderly and children.

There have also been significant cases in the workplace but with less frequency. However, it should be noted that in such cases, there have been significant achievements in the field of human rights protection. The same can be said in the area of pensions.

With regards to conflict mediation, there have been a significant number of court settlements, which implies a reduction of time and court costs and a greater flexibility in solving the problems of the population served. Pedagogic attention has become a feature of our work with the users, children and adolescents that, because of the violence they experience, have difficulty learning and returning to school. The role of the child psychologist in these cases is crucial to the client's ability to receive help both in the process of returning to school and in the identification of difficulties and monitoring of these cases.

Psychological support for users is a fundamental tool in the performance of our work since most of our users lack the psychological support to overcome the difficulties that they face.

In its five years of work, the Terra Viva Society, through its Center for Human Rights Excellence, has attempted to provide a social response to the problems of the communities in which it operates, continually fighting for the protection and promotion of human rights and the full exercise of citizenship.

64 **Costa Rica**

**Oficina de Naciones Unidas contra la Droga y el Delito - UNODC**

## **HUMAN RIGHTS, SEXUAL DIVERSITY AND HIV IN THE PENITENTIARY SYSTEM OF COSTA RICA**

### **Principle objective of the investigation**

Provide current information about human rights of sexual diverse and/or HIV/AIDS populations in the Costa Rican penitentiary system.

### **Population base for the research**

The investigation was conducted with inmates of sexual diversity and people with HIV in the Costa Rican women's prison (El Buen Pastor) and men's prisons (Cartago, Gerardo Rodriguez, La Reforma, San Rafael and Limon).

### **Results of the investigations**

- Sexual diversity is a permanent component of the prison subculture.
- Many of the mandates of heteronormativity related to sexual orientation, gender identity and sexual practices that are accepted in patriarchal society lose power as a coercive social control mechanism in conditions of incarceration. It is modified and adjusted to the needs of sexual relations. Therefore, the concept of heteroflexibility emerges, causing a conflict between the homo-lesbo-bi and internalized transphobia for the inmates.
- The social construction of gender identity influences the enactment of sexual activity in prisons. Women in the prison system can live more openly with regards to their sexual activity, while men in the same situation must rethink their identities in relation to sexual practices conducted.
- In the women's penitentiary, sexual diversity is more visible. Couples and the relationships these entail are formed, and women who have sex with other women do not question their gender identity. The administration tolerates sexual diversity but does not accept it.
- In the men's penitentiaries, it is rare to see couples, and if they do exist, they are between a homosexual and a transgender person. In relationships that involve a transgender, there is often violence based on power relations. Homosexual relations among inmates often lead to questions of men's gender identities, placing their virility in doubt. These results in that homophobia and transphobia are more evident in these penitentiary centers.

With respect to each of the rights:

### **IDENTITY –PERSONAL AUTONOMY**

- Female inmates consider this right to be guaranteed, however, indicate that they have had problems receiving male clothing within the penal center.
- As previously mentioned, lesbian and bisexual relations do not question their gender identities. They see themselves as women.
- There is a contradiction when their diversity is associated with three external factors: religion, family and society. These factors lead them to question the morality of their acts.
- Men, for the most part, consider that this right is not fulfilled and that their liberty of expression is violated when their condition of sexual is not accepted. They believe that they can live their sexuality more freely outside the prison than within it.
- Transgender inmates in men's prisons do not identify themselves as such, but as gays and homosexuals. They do not have any knowledge of terms such as social homophobia, internalized or transphobia.

### **NON-DISCRIMINATION**

- In general, they do not consider themselves discriminated against as a result of their sexual orientation. However, when definite cases are identified, they receive taunts and insults.

- Men feel that their right to express their sexual diversity is conditioned by penitentiary regulations and cultural norms.
- Respondents believe that this population is taunted and insulted by some penitentiary officials and inmates. Transgender persons feel discriminated against for their way of dressing and behaving.

### **PHYSICAL, SEXUAL, EMOTIONAL AND PATRIMONIAL INTEGRITY**

- In women's prisons, all respondents stated that they had not been victims of domestic violence as a result of their sexual diversity. Cases of physical assaults occur in couples but not based on sexual status. The men's responses varied in terms of physical aggression, stating that some had been victims of violence but could not determine whether it was due to their sexual orientation. They agree that homosexual practices are punished in function of their prison conditions, depending on their pavilion, meaning the arbitrariness of inmate security. Aggressions are not reported for fear of reprisals.

### **SEXUALITY**

- The relationships between female inmates are a central element of life in detention, as a source of psychological, economic and protection support.
- The relationships that exist within men's prisons are more tied to sexual practices with partners than in shaping emotional relationships.
- Trans men establish relationships with other trans men based on patriarchal power roles (domination – submission.)
- Sexual practices are restricted to conjugal visits and to the prison structure, according to article 66 that establishes that "the conjugal visit is the exercise of the right of a person deprived of liberty to intimate contact with another person of his/her choice, of the opposite sex, and within the constraints imposed by incarceration and legal order, within a framework of dignity, respect and emotional growth.

### **HEALTH**

- That the state of the inmates' sexual orientation does not affect their medical care.
- They agree that medical and psychological care provided by the penitentiary system is insufficient.
- Prison conditions increase the physical and mental deterioration of the inmates.
- Total absence of information about sexual health in the Penal Centers.
- There are risk behaviors such as multiple partners without protection between inmates, the heterosexual relations during the conjugal visits, the practice of tattoos and blood pacts.
- The lack of knowledge in the inmate population means that, for example, women believe that the risk of HIV or STD infection is virtually inexistent in lesbian practices that do not include penetration.
- Women do receive condoms for the conjugal visits but only upon request, and the men informed that not all had access to them.

### **Sexual Diversity and HIV**

- In women's prisons, most resumed their ARV upon entering the penal system; they are satisfied with the care received both within and outside the prison but are aware that the prison conditions complicate their care.
- The majority of women still have doubts about HIV and means of transmission. They ask for outside counseling.
- None have been rejected because none have divulged their condition to their companions due to myths and prejudices regarding the subject.
- None of the interviewed women found a correlation between HIV and sexual diversity.
- Men with HIV believe that in general the medical care is good but not comprehensive, as they have to consider aspects such as nutrition, psychological attention, work, etc., which is not guaranteed in prison.
- There is a clear need for basic information about HIV such as information about transmission and prevention.
- Comprehensive health is not guaranteed (nutrition, psychological care, work). They ask for outside counseling.
- All men stated that they have been rejected for their HIV condition.

- More than 50% of the respondents do find a correlation between HIV and sexual orientation.

### Conclusions

- The violation of human rights of PPL sexual diversity occurs in three areas:  
1. Sexuality      2. Identity      3. Non-discrimination
- Society's patriarchal cultural reinforces stigmatization and discrimination towards inmates with HIV and people of sexual diversity. According to the respondents, it can be seen in the treatment by some of the penitentiary officials, creating difficulties for expressing sexuality.
- There exist a series of vague and/or distorted ideas surrounding sexual orientation and a general lack of knowledge about the concept of gender identity and sexual identity by the same people of sexual diversity, some inmates and some of the penitentiary officials.
- Distinct characteristics exist in the perception and enactment of sexuality in the men's and women's penitentiary centers.
- Inmates of sexual diversity relate this condition solely to sexual orientation and not to gender identity.
- Religious groups that realize activities inside the Penitentiary Centers reinforce the prejudices and stereotypes surrounding sexual diversity and contribute to stigmatization and discrimination.
- People with HIV are satisfied with the medical care, but consider that there is no comprehensive HIV care (nutrition, psychology, etc.) and there is a need for a peer program.
- Although female inmates did not see a relationship between HIV and sexual diversity, the majority of men with the same condition did see a connection, a situation that reinforces a triple stigma and discrimination (incarcerated, HIV positive and belonging to sexual diversity).
- Fear of being exposed as people with HIV and the lack of confidentiality.
- Lack of knowledge in the inmate population with HIV regarding the transmission and safe sexual practices, among related subjects, and absence of training on these subjects by the penitentiary system.
- There is an absence of training and awareness of the penitentiary officials on human rights, sexual diversity and gender.

65 Latin America

NGOS for the Americas on AIDS-COASCE Commission on Prison and Confinement

### Penitentiary Situation and HIV in the LAC Region

According to information provided by the United Nations Office on Drugs and Crime – UNODC, there are over 30 million people in the world's penitentiary system of which 10 million are subjected to solitary confinement.<sup>1</sup> The Latin American and Caribbean region has the largest increase in detainees, the highest homicide rate (Latin America: 19.9; Africa: 10.1; Asia: 2.1; Europe: 1.2) and the highest rate of incarceration in relation to other continents according to the International Center for Prison Studies.

The following table<sup>2</sup> reveals the situation in the Southern Cone about the capacity of the system and overcrowding:

PAÍS	CAPACIDAD DEL SISTEMA	POBLACION PENAL TOTAL	% DE SOBREPoblACION	Nº DE SOBREPoblACION
ARGENTINA	46.494 (2006)	60.621 (diciembre 2006)	30%	14.217
BRASIL	233.907 (Junio, 2007)	426.658 (Junio, 2008)	82%	192.751
BOLIVIA	4.959 (Junio, 1999)	7.682 (octubre, 2006)	55%	2.723
CHILE	31.576 (diciembre, 2007)	48.855 (mayo, 2008)	55%	17.279
COLOMBIA	53.969 (Junio, 2008)	67.609 (Junio, 2008)	25%	13.640
ECUADOR	7.463 (diciembre, 2007)	17.024 (abril, 2008)	128%	9.561
PARAGUAY	5.794 (diciembre, 2007)	6.365 (Julio, 2008)	9%	571
PERU	23.259 (mayo, 2008)	43.253 (mayo, 2008)	86%	19.994
URUGUAY	5.829 (diciembre, 2007)	7.474 (diciembre, 2007)	28%	1.645
VENEZUELA	16.909 (octubre, 2005)	23.299 (Julio, 2008)	38%	6.390

At the regional level, the situation for 2011 is as follows: Chile has the highest rate of incarceration (304 for each 100,000 inhabitants)<sup>3</sup>, or 52,372 detainees as of February 28, 2011; followed by Panama (298) and Brazil (253). The level of incarceration and overcrowding in prisons does not always correlate to the homicide rates: Venezuela: 52, Colombia: 33; Paraguay: 116; Peru: 10.4; Uruguay: 5.8; Argentina: 5.3; Chile: 1.5.<sup>4</sup> The literature has shown that HIV detection rates in the prison system is higher than in the general population, and that the epidemic could become a serious threat if the right programs are not created.

### Regional Response to HIV in prisons

The policy of the United Nations on Drugs and Crime has been to support the opening of associative spaces in each of the Latin American and Caribbean zones in which institutions are in charge of the incarcerated penal population, the Programs on Prevention of HIV and AIDS and the organizations from civil society working on these issues.

The only operating policy is the Central American and Dominican Republic network of Penitentiary Systems on STD, HIV and AIDS – REDCA CP, which realized its II Meeting in the city of El Salvador last August, centered on “Penitentiary Systems and Human Rights.”

The Sub Regional Andean Network on Prisons and HIV was formed in March of 2008 with representatives from Venezuela, Colombia, Ecuador, Bolivia, Peru and Chile. In this meeting, an agreement was reached to work together, but it has not met since, despite the request that we presented to the Executive Secretary of the Andean Regional Health Authority. Meanwhile, the Mercosur Network has not been able to comply. The other milestone was the “Regional Consultation for Latin American and the Caribbean on AIDS in Prisons” reached in March 2008 in the city of Sao Paulo. Participating in the consultation were Ministries of Health and Justice and from Civil Society Organizations working on prison issues in 21 countries in the region. The result was 21 recommendations that include the realization of national consultations to determine the situation of the HIV and AIDS epidemic inside the penal system, including access to treatment and prevention in line with UNAIDS and UNODC.

Lastly, in the Regional Consultation and the High Level Meeting on Universal Access which took place in Mexico

City in early March of this year, the Policy Declaration of the Regional Community Networks – REDESLCAC – “Less promises and more action towards 2015”. Among its demands were: VIII. Attending People Deprived of Liberty, where it is requested that “...States should recognize the weaknesses of the prison system, including its health systems and incorporate the paradigm of public health and recognition of the rights of people living in prisons to comprehensive health care, adapting the necessary measures for attention, care and prevention for people deprived of liberty...”<sup>6</sup> in accordance with the International Guidelines on HIV/AIDS and Human Rights.<sup>5</sup>

A considerable obstacle to generating a regional policy is that we do not have comparative studies of prevention and care policies for HIV and AIDS in the penitentiary systems of Latin America and the Caribbean. The COASCE survey for the V Latin American Forum on STDs, HIV and AIDS realized in Lima, Peru (2009), establishes that there are countries that have incorporated the AIDS Law as in the case of the Dominican Republic and other countries which have established a policy inside the institution charged with the PPL as in the case of Ecuador. In the majority of countries, there are no formal action plans or there are annual operating plans as in the case of Chile.

### Conclusions:

1. Governments have not fulfilled the agreements and recommendations of the Regional Consultation on HIV and AIDS in Prisons. There is no initiative that monitors these agreements.
2. Although there has been some integration of penitentiary health policies in the area of HIV, these, for the most part, do not incorporate a focus on human rights.
3. Legal guarantees for people deprived of freedom do not establish voluntariness and confidentiality of HIV testing.
4. The segmentation and exclusion in the penitentiary for people deprived of liberty with HIV and/or AIDS persists.
5. There is a lack of training of professional custodians and personnel that work inside the prisons in PPL human rights.

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- 2 Dammert, Lucía y Zuñiga, Liza. La Cárcel: problemas y desafíos para las Américas. Santiago, Chile. FLACSO 2008
- 3 International Centre for Prison Studies. Universidad de Essex. World Prison Brief. Accedido el día 28 de abril de 2011 en la dirección: [http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=215](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=215)
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66 Nicaragua

Particular

### Brief analysis of laws and practices regarding HIV/AIDS in Nicaragua

Here are some legal considerations of the major national laws and practices related to HIV/AIDS that complicate the fulfillment of human rights in the national response to the epidemic.

Law for Promotion, Protection and Defense of Human Rights in relation to AIDS (Law No. 238 of 1996)

#### Art. 4 of the Law and Art. 4 of the Regulation

These provisions should be supplemented and strengthened with a special regulation governing the protection of personal information (Habeas Data) and the protection of the right to self-image, both of which are not specifically guaranteed in the Political Constitution or by a special law on the subject.

#### Art. 24

It should be noted that cases of stigma and discrimination against people living with HIV and their families occur

not only in public schools but also in private, both at the time of application for admittance and during the time spent in both categories of schools.

On the other hand, it should be noted that according to art. 6, inc. h of the General Education Law, the National Education System consists of the Basic and Medium Education Subsystem, the Technical and Professional Education Subsystem, the Autonomous Regional Education Subsystem (SEAR), the Extra-school System and the Higher Education Subsystem.

#### **Art. 31 and 32**

At the time of updating and expanding the list of delegates from public and private institutions mentioned in the two articles above, participation in CONISIDA must be ensured, among other organizations including: private sector organizations, the judiciary, Public Ministry, the National Army, the Institute of Nicaraguan Women, representation of municipal governments, religious organizations, National Council of Universities, Ministry of Family, Youth and Children, PLWHA organizations, the Ombudsman for the Defense of Human Rights (currently it is done in practice despite the confusing Inc. h of art. 32 or Law 238), sexual diversity organizations, Ministry of Finance and Public Credit, Nicaraguan Youth Institute, Regional Commissions on AIDS of the North and South Atlantic, respectively.

#### **Art. 34 of the Law, art. 4 and art. 32 of the Regulation**

First, it is necessary to reiterate that the international commitments and national laws require the Nicaraguan State to allocate a sufficient budget to ensure an effective and efficient response to the HIV epidemic, including the allocation of economic, human and technical resources of the national authority (CONISIDA).

Moreover, since CONISIDA is a multi-sectoral institution and independent from the Health Ministry (although it is chaired by the Ministry), its budget must not be an appendix to this Ministry. This would conflict with its functional and administrative autonomy, which must be clearly established. In any case, it is the duty of the State of Nicaragua to provide a financial item in the Republic's General Budget that proves its commitment to the national response to the epidemic by allocating sufficient resources that do not limit the response, which often occurs when states guarantee the population's economic, social and cultural rights.

#### **Art. 36**

Returning to comparative law and national legislation, it is not possible to "convert" CONISIDA into a judicial or quasi-judicial organ that imposes ethical (?) and monetary sanctions, prior to the existences of a national institution like the Ombudsman for the Defense of Human Rights, who is mandated, through Law No. 212, to promote and defend human rights before the Public Administration and other bodies who violate human rights by act or omission.

Monetary sanctions represent a certain complexity in the country in the absence of the existence of a true jurisdiction of the contentious-administrative, which grants compensation for damages or losses in cases of perpetration of human rights violations by the Public Administration. Moreover, the civil evolution of criminal responsibility is extremely inaccessible in the country, given the lack of technical capacity in the Public Ministry. Lower-income populations would also incur high costs when hiring private lawyers since public legal services for HIV/AIDS do not exist.

#### **Art. 37**

This article suffers from the most elemental substantive provisions and procedures that guarantee the safeguards of administrative due process for the investigated party, in both the way the article is written and the absence of a legal and legitimate jurisdiction for the contentious-administrative in the country, as described in the previous observation.

#### **Regulation of Law 238 of 1999**

#### **Art. 5 and art. 9**

It is concerning that art. 5 and the initial part of art. 9 only call for the application of fines, destined for State coffers, (whose rate is disproportionate in light of the differences in damages and loss caused in both types of cases) for those who disregard the law (through a process that is not clearly established), but does not in any way refer to restitution and compensation for the victims of human rights violations, that would foster a mechanism to guarantee that these violations are not repeated, provided by the extensive jurisprudence of the Inter American Court of Human Rights.

#### **Art. 6**

Private laboratories should be obligated to provide pre- and post-counseling, in accordance with the rules dictated by the Ministry of Health. Similarly, these laboratories are required to protect and guarantee private information, the right to confidentiality and privacy, honor and reputation of those that use their services. Failure to fulfill these rights should be sanctioned.

#### **Art. 21**

Regarding hospital and mental health centers, the main obligation is to guarantee the human rights corresponding the Ministry of Health. For inmates and/or those deprived of liberty, the responsibility for the respect for human rights is the obligation of the judiciary (hearing judges, trial judges, sentencing judges and prison supervisors) and of National Penitentiary Staff under the Ministry of the Interior. In the case of PLWHA detained in Immigration Retention Centers or Homes (not included in this art. 21), the obligation would fall to the General Office of Immigration, under the Ministry of the Interior. The fulfillment of these institutional obligations must be realized in coordination with the support of the Ministry of Health, without prejudicing the powers of the Ombudsman for the Defense of Human Rights.

#### **Art. 23**

Despite this provision, at present, the health services delivered by the social security system are provided through private medical clinics. These do not provide any HIV/AIDS-related care, which is provided by hospitals and public health centers under the Ministry of Health to the detriment of the right to social security for those affiliated with the system, made through monthly payments.

### **Penal Code**

#### **Art. 156 Provoked Infection**

Although art. 22 of the Code states: "When the law criminalizes conduct it does so as a matter of fraud, unless it expressly provides liability for negligence", the offense called Provoked Infection results in that the judiciary can also penalize reckless conduct in HIV exposure and transmission. This is contrary to UNAIDS policies which establish that criminalization or sanctioning of transmission can only happen when intentional transmission by the active subject can be proved.

#### **Art. 143 Therapeutic Abortion**

For many years, Nicaragua was internationally recognized for permitting therapeutic abortion in scientifically determined cases, but it was repealed in 2006, and with the adoption of the current Penal Code (2007), this practice was penalized. Given this legislative setback and the flagrant violations of human rights of women, United Nations organs such as the Committee on Human Rights, Committee on Economic, Social and Cultural Rights, Committee Against Torture, Committee on the Rights of the Child, Committee for the Elimination of Discrimination Against Women and the Human Rights Council (through the Universal Periodic Review mechanism), have recommended to the Nicaraguan State abolish the criminalization of therapeutic abortion because of the irreversible damage caused to the health and live of women, including people living with HIV or AIDS.

#### **Banks and Insurance Companies**

Meanwhile, banks and insurance companies use discriminatory and stigmatizing criteria to deny credit and

insurance of various kinds to people living with HIV. In these cases, the government remains outside of these regulations.

It should be mentioned here that, at present, the fundamental principle of equality before the law has entered the domain of *jus cogens* and *erga omnes* obligations provide for protection that involves all States and generates effects for third-parties, including individuals, as expressed by the Court of Human Rights in its Advisory Opinion on Legal Status and Rights of Undocumented Workers of September 2003. Therefore, complaints of discrimination could lead to international responsibility against States.

67 Colombia

Comunicación Positiva

### **For the Right to Health... NO to patents.**

#### **The Kaletra Case**

The irregularities in the delivery of medicine, the effects of these disruptions have on the overall health of the people and the high cost of Kaletra, which is essential for the treatment of HIV, are the factors motivating four Colombian social organizations to ask the Abbott laboratory for a voluntary license on the patent of the product.

The goal of this application: to facilitate the access to this medicine and avoid the delays of irregular deliveries, along with the corresponding interruptions that result in consequences for the overall health of the people.

Through a letter to the pharmaceutical company, the Bureau of NGOs working in HIV/AIDS, the Colombian Network of People Living with HIV, IFARMA and Mision Salud, are searching to create openings for local production, and for the import and free distribution of medicine, resulting in reduced costs for the final consumer and better treatment coverage.

In its letter, the social organizations specified that the voluntary license was being requested under conditions that protected the investment of the manufacturer, facilitating the recuperation of costs, without prejudicing the investigation and development of specific treatments.

Having received no response from the the laboratory, the next step was taken: to ask the National Government for the compulsory license as a matter of public interest.

The request for the declaration of public interest signals that the positive response would benefit more than 1,200 people, providing access to the medicine, with appropriate cost and coverage. In addition, the Colombian State would save more than \$1.2 million a year.

According to Decision 486 of the Andean Community of Nations and the Agreement on Intellectual Property Rights related to trade of the WTO, Colombia can issue a compulsory license for reasons of public interest in cases like this.

In May 2009, the National Commission on Medicine Prices set price ceilings for Kaletra. In accordance with this decision, the maximum cost per year per patient will be \$1,067 for hospitals and clinics and \$1,591 for the rest of the market.

At that time, it was estimated that the price reduction would save the Colombian government \$10 million.

According to information from the Ministry of Social Protection, 5,829 people in Colombia take the medicine. Of these, 5,429 purchase the medicine commercially and 400 by insitutional means.

On May 22, 2009, the Ministry of Social Protection denied the request for declaration of public interest for the medicine.

One of the reasons argued in the decision was that there was no problem accessing the medicine, that it was already included in the Compulsory Health Plan, which makes delivery mandatory for companies that provide health services.

Thus, the ministerial decision ended the action filed in February 2009. Faced with this situation, a Popular Action was filed, a legal recourse provided for in the Colombian Constitution, to defend the rights and interests of civil society in matters of health.

The legal process is currently in the evidence gathering phase and is waiting for a prompt response.

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En <http://youtu.be/-WjKqWMEB6g> - a video clip that shows the different pieces of communication published for the diffusion of this information.

The full story is available in radio format at <http://www.mirada-latina.org/joomla/content/view/478/128/>, a six-chapter radio series that narrates the community struggle to liberate the patent that protects an essential medicine for the treatment of HIV on the national market.

There are also audio-capsules, created to facilitate the dissemination by other organizations: <http://www.mirada-latina.org/joomla/content/view/442/128/>

68 Paraguay

SOMOSGAY

### HIV in Paraguay

It is estimated that approximately 13,000 people, adults from 15 to 49 years of age, are living with HIV/AIDS in Paraguay, with an under-registration of 50%<sup>1</sup>.

Overall, 59.2% of recorded cases are young people from 14 to 34 years of age<sup>2</sup>. Of all the recorded cases of AIDS from 1985 to 2009, 71% are male and 26.8% women, however with regard to HIV the proportion is 1/1. The main channel is sexual transmission with 86% of recorded cases<sup>3</sup>. With regard to men, in 47% of the recorded cases the transmission occurred through heterosexual relations, 32% through homosexual relations, 7% through bisexual relations, with a remaining 15% of blood-borne and vertical transmissions, plus cases with unknown data. In the recorded cases of women, sexual transmission represented 88% of the total, without disaggregation by type of sexual relation, leaving 12% of blood-borne and vertical transmissions, plus cases with unknown data.

It is important to point out that the current democratic system of Paraguay was established very recently, after the fall of the dictatorship in 1989. The dictatorship represented a period of extreme violation of the Human

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<sup>1</sup> Official estimates of PRONASIDA in Paraguay. SOURCE: REPORT ON THE EPIDEMIOLOGICAL SITUATION OF HIV/AIDS IN PARAGUAY. PERIOD 1985 – 2009. National AIDS-STDs Control Programme.

<sup>2</sup> 88% of people living with HIV/AIDS (PLWHA) are from 15 to 49 years old, and the most affected is the group of people with 25 to 34 years of age, which represents 37.7% of the total of PLWHA. After that, the group of people with 15 to 24 with 21.5%, and then children and teenagers below 15 years of age, which represent 3.3% of the total.

<sup>3</sup> In 86% of recorded cases the transmission channel was sexual, in 2% vertical transmission and in 9% of cases blood-borne (blood transfusion and drug consumption through injection), and 9% of cases with unknown data.

Rights of all the citizens, and the rights of the LGBT community in particular. Today, discriminative and repressive attitudes still exist both in the public and private spheres, making the response to HIV limited and insufficient.

### Discrimination and stigma

A recent study on the stigma and/or discrimination suffered by people with HIV showed that, in the last 12 months, half of the participants in the study<sup>4</sup> had experienced some form of stigma or discrimination due to their condition, and 100% of transgender people participant in the study declared having suffered discrimination in the last year.

The population stated that one of the main reasons for discrimination is their fear of HIV transmission, which is essentially linked to their lack of understanding about how HIV is transmitted.

Some of the discriminatory attitudes mentioned in the study include: obligatory HIV tests that condition the hiring of employees<sup>5</sup>, isolation and exclusion from the family, children expelled from schools because they are HIV positive or orphans from families affected by AIDS, health care personnel refusing to treat patients with HIV or suspected to be HIV positive<sup>6</sup>, violation of the confidentiality and privacy<sup>6</sup> of patients, and insurance companies requesting HIV tests as a condition to sign a contract or refusing to provide medical or life insurance to homosexual people.

### Recommendations

With regard to State bodies, PRONASIDA is limited to providing health care services, with little impact in organization of the public and private sectors with regard to the prevention of HIV. It is important to stop reducing HIV to a health problem, and approach it from different angles and in coordination with all sectors, such as education, the community, legal framework, commerce, etc.

There are numerous measures that have to be implemented in order to improve the response to HIV, and reduce the discrimination and stigma suffered by people living with HIV or those perceived as carriers.

**Legal framework:** The recent law N° 3940/09<sup>7</sup> represents a step forward compared to the former law in terms of non-discrimination and Human Rights perspective<sup>8</sup>, and the resolution 730/09 of the deputy Minister of Labour, which establishes the outright ban of the HIV medical exam as a precondition to access employment and establishes penalties for those breaching the regulations. However, there are many legislative measures that are necessary and urgent:

- The passing of the *Law Against All Forms of Discrimination*<sup>9</sup>. Whereas the lack of regulation of the constitutional principle shouldn't hinder the State's authority to penalize discrimination, this law would provide a clear and effective mechanism to defend all those affected by discrimination.
- The passing of the *Law of Sexual, Reproductive and Maternal and Perinatal Health*<sup>10</sup>, which intends to regulate the current programmes of the Ministry of Public Health and Social Welfare, in compliance with the Programme of Action of the International Conference on Population and Development of Cairo. Non-discrimination, autonomy, and respect for individual freedom are among some of the principles of the interpretation and implementation of the law. This law is conceived as a means of guaranteeing the

<sup>4</sup> 56.25% of interviewees. Rate of stigma among people living with HIV/AIDS in Paraguay. VENCER Foundation and UNFPA. May 2010.

<sup>5</sup> 6.2% declared having lost their jobs in the last 12 months because of their HIV condition and 2.7% because of their HIV condition and other circumstances. In the last 12 months, 8.2% of people were refused services of family planning because of their HIV condition.

<sup>6</sup> With regard to health services, 16.8% declared that they were refused health care in health centres in the last 12 months, including dental health, and 3.9% of the total declared that they were refused family planning services because of their HIV condition in the last 12 months.

<sup>7</sup> Law that establishes the rights, obligations and preventive measures with regard the effects caused by HIV and AIDS.

<sup>8</sup> Law 102/91

<sup>9</sup> Since May 2007, a bill developed in a participatory manner and promoted by the Network Against All Forms of Discrimination is being revised by parliamentary commissions.

<sup>10</sup> Project submitted for the first time in the year 2005, and rejected in the year 2007 without much parliamentary debate. Submitted again in August 2008. (Source: Report on PARAGUAY – Universal Periodic Exam – 10<sup>th</sup> Round – January 2011. Submitted by the National Coordination of the Campaign for an Inter-American Convention on Sexual and Reproductive Rights and the Initiative for Sexual Rights)

population's sexual and reproductive health, and to promote sexual health by preventing, detecting and treating HIV and other STDs.

- *To clarify the existing legal framework* on adoption<sup>11</sup> and civil marriage<sup>12</sup> (to name just a couple of examples), and to capacitate government employees in charge of its enforcement, to avoid discriminatory interpretations that could affect people with HIV.
- *Changes in discriminatory laws and laws that reinforce stereotypes.* A clear example of these laws is the lack of a legal age of consent for sexual relations, which can only be inferred from the existing penal code. Teenage girls can have consensual sex with a male from the age of 16, and there is no minimum age for teenage boys to have consensual sex with an adult woman. This regulation suggests that it's ok for adult women to have sexual relations with teenage boys, but condemns other behaviours, even with severe penalties for "homosexual acts"<sup>13</sup>. Another aspect requiring legislation is the judicial protection of homosexual couples, which are considered as "ephemeral and casual", even immoral by some sectors, a situation that further stigmatises the LGBT community.
- *Training of court officials.* Paraguay is a signatory State of a huge amount of Human Rights conventions which contain concise rules against all forms of discrimination, court officials seldom enforce these rules, whether due to ignorance or lack of training. Training in Law schools<sup>14</sup> on matters of Human Rights and non-discrimination for government officials from the Judiciary, the Public Prosecutor's Office or public defenders, could have a strong impact on the effective implementation of the existing regulations, and would help in the mainstreaming of non-discrimination policies. Unfortunately ignorance is still rampant, a fact proven by the persistence of the belief that criminalizing the transmission of HIV helps preventing it<sup>15</sup>.

Education: As mentioned by the people that participated in the Index of Stigma and Discrimination, the main reason for people to discriminate is the lack of knowledge on the ways the virus is transmitted. More education on the subject is necessary, especially for teenagers, youngsters and young adults through the official educational system, and also for the general public.

The Ministry of Education launched the Framework for Comprehensive Sexuality Education, which included principles of non-discrimination, diversity and gender perspective, but fundamentalist groups complained that the framework promoted immoral conducts and dangerous ideologies.

Education on the subject has to come not only from official institutions, but also from all the social stakeholders, mass media in particular. Until now, themes related to sexuality are in general treated timidly, even in a prejudiced way and with the presence of taboos: for example, HIV is still described as "the deadly virus" and AIDS

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<sup>11</sup> "Article 14.- People suffering from infectious and contagious diseases will not be eligible for adoption..." Law 1136/97 of Adoptions.

<sup>12</sup> "Article 17.- Will not be allowed to marry: ...inc. 3) People who suffer from chronic contagious disease and hereditary..." Law 1/92 which modifies the Penal Code.

<sup>13</sup> "Article 17.- Rape of a minor. 1<sup>st</sup> A man who persuades a woman from fourteen to sixteen years of age to perform extramarital sexual act will be fined. 2<sup>nd</sup> When the perpetrator is below eighteen years of age the penalty can be dispensed with". "Article 138.- Homosexual relations with minors. An adult person who performs a sexual act with a person of the same sex below sixteen years of age will be fined or punished with a sentence of up to two years of imprisonment." Penal Code.

<sup>14</sup> There have been regrettable cases like the presentation "AIDS and penal responsibility, updated in the Paraguayan legislation", by Dr Rosa María Noguera in the International Congress of Medical Law, held on September 2010, aimed at students, educators and professionals. Some extracts: "Other sources of contamination are being considered at the moment: bodily fluids, urine, sweat, saliva, tears, ear and vaginal secretions, menstrual blood, bronchial fluids (colds). The mother of a child contaminated by blood transfusion; Nurse diagnosing a man with AIDS post-mortem. Function of the condom: provides only 30% of security, incorrect use, manufacturing defects, and the pores are as big as the HIV virus" (sic). "AIDS is a chronic infectious disease caused by HIV, characterised by a progressive and irreversible deficiency, of rapid spreading and highly lethal. It reduces the organism's defence system, preparing and facilitating the development of opportunistic diseases such as tuberculosis, herpes, fungus, malnutrition, depression, stress, etc."

<sup>15</sup> "It would be convenient that the Penal Code contributed, within its capacities, to stop the transmission of a grave disease such as AIDS. We cannot tolerate misconducts which help to spread said disease to innocent victims." "The behaviours that entail a risk of transmission have to be approached from two angles. The **abstract danger** that the transmission of the disease poses for the population, and the **danger of actual injury to a specific person**. There should be two precepts, **one against public health and the other against the health or life of a specific person**." "AIDS and penal responsibility, updated in the Paraguayan legislation." By Dr Rosa María Noguera in the International Congress of Medical Law, held on September 2010.

as a “deadly and incurable disease”.

Even though there are interesting initiatives in the area of communication, like the “Informed on HIV and AIDS”<sup>16</sup> guide, the media still resorts to clichés like the “deadliness and incurability” of the virus as a strategy of prevention based on fear, increasing the already ever-present discrimination against people with HIV.

It is important to work towards a comprehensive sexuality education, promoting safe and respectful practices and co-responsibility.

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Honduras

Individual

Honduras has many laws and regulations, but these don't seem to have permeated society and many people still don't know about them. Below, I mention some of the laws that criminalize people with HIV and AIDS.

– Article 180 of the Penal Code establishes: whoever maliciously spreads a dangerous disease or causes an epidemic through the diffusion of pathogenic germs, will be sentenced to 3 to 6 years of imprisonment. Even though it is not specified that the law is applicable to people with HIV and AIDS, it is interpreted that in the specific case of a person with HIV who tries to intentionally attack someone with a needle infected with the human immunodeficiency virus (HIV), he/she will be punished with 3 to 6 years of imprisonment. A law that criminalizes the transmission of HIV is not effective to prevent the epidemic and only causes discrimination and silence among the people living with HIV, the majority of them women, which increases their vulnerability.

Honduras has the Special HIV/AIDS Law, which came into force on November 1999. Whereas this law has helped improving the quality of life of people with HIV and AIDS, it is also true that it criminalizes them, as it is clear in article 79: if a couple intends to adopt a child and they are both HIV+, the adoption will be denied because the life expectancy of the couple would pose a risk to the child. The criminalization of people with HIV sentences us to death, without considering the fact that a person's death is unpredictable.

The Special HIV/AIDS Law facilitates the access to comprehensive health care for people with HIV and AIDS, but this access is hindered by the lack of public policies on HIV: the State does not provide pain-relief medicines to patients with HIV if they are resistant to the antiretroviral therapy provided by the Secretary of Health, which prevents these patients from having the comprehensive access guaranteed by the law.

I denounce the preventive police of this country for their infringement of rights of the transgender population and girls living with HIV. We have recorded many cases in our organization, while working for the defence of human rights of the transvestite and transgender communities.

We have a self-help group called Ángel Azul (Blue Angel) working with girls living with HIV, in particular sex workers in a situation of vulnerability to discrimination and attacks from the police and the clients (the already existing danger for sex workers is increased when their HIV+ condition is known).

There have been many complaints submitted to the CONADE (National Commission of Human Rights) and the Public Prosecutor's Office, without any results so far. As an organization we have witnessed and helped in many cases where we have knocked on every door, without receiving any help.

As girls and sex workers living with HIV, we demand the government's authorities to take some action and do

<sup>16</sup> Guide for journalists, communication professionals and social communicators. UNFPA.

something about our complaints, to respect the Law for people living with HIV and grant us the access to the benefits of the rest of the population. We also ask the governments of other countries to help us make the dream of living like any other citizen a reality.

### **Education**

We have a right to not being discriminated because of the way we look, a right to an education and access to academic studies, and to be able to choose a career, because are prepared and able to perform any activity.

### **Health**

We have the right to receive comprehensive care in health centres. We have seen many complaints from people who have been refused medical attention because of the way they look or their HIV+ condition, and there are still doctors who refuse to treat these people; unfortunately none of these complaints have changed the situation.

We are witnesses of day-to-day denial and rejection, for example being refused entrance into public places such as restaurants, clubs, and clothing stores, or being treated in an aggressive manner for trying a piece of clothing in a store, as recorded in some of the complaints.

We have cases of girls taken to dark places and getting beaten up by the clients, allegedly after they find out about the girls' HIV+ condition and because they are afraid of getting infected. But after the girl files the complaint, the Prosecutor's Office doesn't even bother investigating the case. This is what happens daily in a country where we are excluded from society and the government.

After the coup d'état on June 28<sup>th</sup> 2009, the transgender community suffered the hate of society and the authorities with a wave of hate crimes that resulted in 32 transgender women murdered. Many of them were killed with registered official weapons, which mean that the same government officials who are supposed to protect us were the perpetrators of these crimes. To this day, none of the complaints and reports filed has resulted in any convictions.

Honduras is a country that refuses to fight the violence against the most vulnerable communities. We are unprotected and our complaints are ignored. The least we can do is expect that justice is done for the girls that are no longer with us.

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Guatemala

CONASIDA

What are the improvements in the subject of HIV? What are the advantages of having a Decree that protects us? What have we done to put into effect what was established on Decree 27-2000?

Many activists working on STDs, HIV and AIDS have endured years of problems such as the lack of access to antiretroviral therapy, partial shortage of supplies, refusal of comprehensive care in social security, stigma and discrimination, among others.

Being diagnosed positive for HIV is only the beginning of all sorts of hardships (rejection, sorrow...), and we feel the obligation to be a part of the solution to this problem, through the inclusion in decision-making debates, working for prevention, care and control of the epidemic, and eventually forming leaders who will watch over the best interests of our society.

When we talk about stigma and discrimination, we are not only referring to people diagnosed with HIV but also the

families and friends, people who coexist with them and suffer the same rejection from society; they don't have any emotional support or receive information about STDs and HIV, the epidemics that affect their loved ones, and there are not able to help them.

To have an identity is one of the inherent rights of human beings, a basic right that is denied to the transgender community because sexual diversity is not recognised and accepted yet. In the modifications to Decree 27-2000 we succeeded in including the populations at greater risk (PEMAR), an achievement that is only the beginning of a long towards the creation of a law of gender identity.

One of our main objectives is the purchase of supplies of antiretroviral drugs in foreign countries, which would provide greater coverage at a smaller cost.

We are concerned about the lack of a social security for life, stipulated by law, but not for all cases: a child of parent with HIV+ will only be covered by social security in certain periods of his life, and then sent to different government bodies. In cases like this, the importance given to the problem in Decree 27-2000 is ignored.

Since June 2007 we have been working with organizations and communities affected by the epidemic, in order to improve the legislation on STDs and HIV, and also working for the promotion, protection and defence of Human Rights regarding HIV/AIDS.

On October 28<sup>th</sup> 2008, the initiative GENERAL LAW TO FIGHT THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND THE ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS), AND TO PROMOTE, PROTECT AND DEFEND HUMAN RIGHTS REGARDING HIV/AIDS, promoted by the Women's Commission, was submitted to the Legislative Direction (INITIATIVE CONTROL), with Registration Number 3947.

After a first reading before the honourable representatives of the Congress of the Republic of Guatemala, the initiative is referred to the Health and Social Assistance Commission for its study and subsequent assessment.

On September 8<sup>th</sup> 2009, the Health and Social Assistance Commission expressed a favourable opinion, and the document is revised again and modified in 30% of its content (8 articles).

The following are some of the articles that were assessed for urgent revision and analysis:

1. CONASIDA. The National Multi-sectoral Commission to prevent and control STDs, HIV and AIDS (CONASIDA) established, attached to the Ministry of Public Health and Social Assistance as a consultant body (to other Ministries as well) on STDs, HIV and AIDS, to advise, support and coordinate between institutions and sectors to monitor and evaluate the implementation of the objectives of the national response to STDs, HIV and AIDS regarding human rights, sexual diversity, gender perspective and cultural relevance.

Response to the principles of the "Three Ones" (Tres Unos). The Ministerial Office coordinated the national strategy for 2011-2015 from a multi-sectoral approach, and identified key stakeholders for the response to epidemic of HIV.

CONASIDA was expected to remain part of the Vice-Presidency, however, following the favourable opinion of the Health Commission of the Congress of the Republic of Guatemala, it became competence of the health director (Ministry of Public Health and Social Assistance). It is important to point out that CONASIDA doesn't have any allocated resources to cover its actions and activities.

2. Integration of CONASIDA. We have conducted an analysis and included more organizations working on human rights; both from the government and the civil society. Among them, the Legal Network (Red Legal) and its Observatory on Human Rights and HIV, the Presidential Commission coordinating Executive Policy on Human

Rights (COPREDEH), and the Human Rights Public Prosecutor's Office.

3. The System for the Monitoring and Evaluation of the Implementation of the National Response to STDs, HIV/AIDS will be in charge of the National Programme for the Prevention and Control of Sexually Transmitted Diseases (STDs), Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) which will coordinate everything related to STDs, HIV and AIDS along with the health sector. CONASIDA will coordinate the rest of the sectors (not related to health) and will promote the collection of data from information systems of those sectors working in the National Response to STDs, HIV and AIDS. CONASIDA will issue at least one unified report about the National Response on December 1<sup>st</sup> of every year.
4. Clinically tested prevention methods will be distributed widely; they will be available and easily accessible, mainly through establishments that provide occasional lodging, such as motels, hotels and pensions, and also adult cinemas, adult video booths, saunas, night clubs, etc. The owners/managers of said establishments will provide at least three condoms as part of their most basic service, regardless of the client's requirements.

An analysis comparing the regulations in the Dominican Republic and El Salvador was carried out to support this article.

The female condom FC2 is expected to be registered in Guatemala soon.

5. Health education. The Ministry of Public Health and Social Assistance, in coordination with professionals and universities of the country, will be responsible for the education on prevention, care and control of STDs, HIV and AIDS aimed at the personnel of private and public health services, in accordance with official regulations.
6. HIV tests on minors. In the cases of minors where it is necessary to perform a serological test for the detection of HIV, the consent of the parents will be obligatory for the blood extraction; unless the minor is able to form his own judgement and express his opinion freely, in accordance with the law.
7. Minors in special situations. The Ministry of Governance, the national Public Prosecutor's Office, the Secretariat of Social Welfare and every other institution working with minors, will have to be coordinated with the Ministry of Public Health and Social Assistance, to develop and implement educational programmes on comprehensive health.
8. The right to social security. Affiliates, pensioners, and beneficiaries living with HIV or AIDS will receive coverage from the Institute of Social Security of Guatemala, without any limitations to this right whatsoever. Because it is chronic, comprehensive care will be guaranteed for life. The aforementioned services have to be national and decentralized.

We sent this document to Dr Víctor Manuel Gutiérrez Longo, President of the Health and Social Assistance Commission on March 17<sup>th</sup> 2011, and had a meeting with Thelma Ramírez, the President of the Women's Commission, on April 20 2011. Both of them are speakers of this initiative (3947) and work on the procedures.

[http://www.congreso.gob.gt/gt/ver\\_noticia.asp?id=12725](http://www.congreso.gob.gt/gt/ver_noticia.asp?id=12725)