



Additional information

for considering the Costa Rica Report

Human Rights Committee

116th Session

March 7 - 31, 2016

This information complements that already provided in March 2015 by *Mulabi - Espacio Latinoamericano de Sexualidades y Derechos*; *Heartland Alliance for Human Needs & Human Rights* and *Akahatá - Equipo de trabajo en sexualidades y géneros* for the List of Issues, also incorporating contributions by *Red Latinoamericana y del Caribe de Personas Trans (REDLACTRANS)*¹ and *TRANSVIDA*² to be considered by the Committee on March 16 and 17, 2016. In particular, this report will provide information with regard to item 4 in the List of Questions related to Costa Rica's Sixth Periodic Report (CCPR/C/CRI/Q/6)³ as proposed by the Committee.

Note: This document makes no reference to the contents of the report submitted by Costa Rica to the Committee as per Article 40 of the International Covenant on Civil and Political Rights⁴ given that it does not address at all discrimination based on gender identity or expression (or sexual orientation).

¹ **REDLACTRANS** es una red integrada por personas trans de América Latina y el Caribe. Trabaja con el propósito de hacer efectivo el cumplimiento y ejercicio de los derechos humanos desde y hacia la población trans a través de estrategias de incidencia política, visibilización, participación y fortalecimiento de nuestras organizaciones en acciones de salud, educación, educación, trabajo y justicia.

² **TRANSVIDA** es una asociación de mujeres trans para mujeres trans. Ubicada en San José de Costa Rica, es la primera organización no gubernamental que lucha por los derechos de la población trans desde hace 6 años. Su misión es la lucha contra la violencia de género a partir de acciones de incidencia política desde una perspectiva de los derechos humanos para garantizar a la población trans una mejor calidad de vida.

³ Human Rights Committee, List of Issues related to the Costa Rica Sixth Periodic Report, Human Rights Committee, CCPR/C/CRI/Q/6, August 19, 2015.

⁴ Sexto Informe Periódico presentado por el estado de Costa Rica, CCPR/C/CRI/6, recibido el 5 de mayo de 2014.

Right to non-discrimination and to equality before the law (Articles 2, 3 and 26 of the Pact)

Legal framework to protect trans persons

1. As stated in our previous report, the Costa Rican Constitution states in its article 33 that "all persons are equal before the law and no discrimination contrary to human dignity can be practiced".⁵ However, this disposition consecrates the right to non-discrimination in a generic way without making explicit any forbidden grounds for discrimination.
2. Local jurisprudence grants constitutional status to the obligations emanated from international treaties ratified by Costa Rica⁶ including the International Covenant on Civil and Political Rights. It is regrettable that Costa Rica has not yet signed the Inter-American Convention against All Forms of Discrimination and Intolerance⁷ open to signature and ratification by Member States of the Organization of American States (OAS) that include "gender identity" and "gender expression" as protected grounds against discrimination.⁸
3. In Costa Rica there are no laws explicitly prohibiting discrimination based on gender identity. The disposition that is usually considered as the only one explicitly prohibiting discrimination against LGBT (lesbians, gay, bisexual and trans) persons — Article 48 in Law 7771 (General Law on HIV-AIDS),⁹ refers only to "sexual ... option".¹⁰ Article 123bis in the Penal Code defines the crime of torture and refers to "sexual option" as one of the grounds on which it is forbidden to "cause physical or emotional pain, intimidate or coerce" a person.¹¹ In both cases, "gender identity" has been omitted. There are also no laws criminalizing hate crimes or considering the victim's gender identity as an aggravating factor in the commission.
4. One of the few positive developments is a Decree issued by the Executive in 2012 declaring May 17 as the "National day against homophobia, lesbophobia and transphobia" and mandating public institutions to "facilitate, promote and support actions aimed at eradicating homophobia, lesbophobia and transphobia".¹² However, this mandate has again been issued in generic terms and not accompanied by specific regulations.¹³

⁵ Constitución Política de Costa Rica, Article 33 (amended by Law No. 7880 May 27, 1999). Available (in Spanish) at: http://www.asamblea.go.cr/Centro_de_Informacion/biblioteca/Paginas/Constituci%C3%B3n%20Pol%C3%ADtica%20de%20Costa%20Rica.aspx.

⁶ Verdicts N° 3435-92, N° 5759-93 and N° 2323-95 of the Supreme Court's Constitutional Chamber.

⁷ *Inter-American Convention against All Forms of Discrimination and Intolerance*, adopted on June 5, 2013 at the 43rd Ordinary Session of the OAS General Assembly.

⁸ See Article 1 of the *Inter-American Convention against All Forms of Discrimination and Intolerance*.

⁹ Ley General sobre VIH-SIDA, Ley 7.771. Available (in Spanish) at http://www.asamblea.go.cr/sil_access/ver_ley.aspx?Numero_Ley=7771

¹⁰ Article 48 of Law 7771 states: "Whoever applies, disposes or practices measures that discriminate on the basis of race, nationality, gender, age; political, religious or sexual option; social status, economic status, civil status or any ailment will be punished with a fine equivalent to 20-60 days of her/his salary. The judge could also declare the public servant disqualified from his/her position for a period of 15-60 days" (underlying ours).

¹¹ Law 8.189 December 18, 2001, adding Article 123 bis to the Penal Code, Law N° 4573. Available (in Spanish) at: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=47750&nValor3=50720&strTipM=TC

¹² Executive Decree N° 37.071-S, DAJ-UAL-MG-549-12, March 9, 2012. Available (in Spanish) at: http://www.cipacdh.org/cipac_articulo_completo.php?art=175

¹³ Centro por la Justicia y el Derecho Internacional (CEJIL) and Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC), *Diagnostico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica*, 2010, p. 22.

5. In July 2013 the Supreme Court of Justice declare the unconstitutional two Penal Code articles that allowed the imposition of "security measures" to persons involved in "prostitution" and "homosexuality".¹⁴
6. The Inter-American Institute of Human Rights¹⁵ has highlighted the increasing political influence of religious fundamentalisms in Costa Rica, hampering the recognition of rights for trans and LGBTI persons in general. Several legal initiatives have been blocked by the strong opposition of the Catholic Church and Pentecostal Christian groups¹⁶.

Recognition of the right to gender identity

7. With regard to the recognition of the right to gender identity, Costa Rica still lacks a gender identity law allowing trans persons to adjust their personal identity documents through an expedite and non-pathologizing administrative procedure.
8. In 2009, Costa Rica accepted a recommendation from Spain in the framework of the Universal Periodic Review to facilitate personal documents consistent to their identities to trans persons.¹⁷ However, the only norm in force is the Executive Decree by the Electoral Supreme Court on identity papers' photographs, whose Article 2 says:

Every person has the right to see her/his image and sexual identity respected at the time of posing for the photograph that will be inserted in her/his identification papers. This right must be conciled with the public interest of having suitable, safe and reliable identity papers. To this end, the photograph must show facial features in such a way that the person carrying the identification document can be identified.¹⁸

Institutional violence against trans persons (articles 7, 9 and 10 of the Covenant)

9. The institutional violence against trans persons in Costa Rica has been a matter of study and concern for several international and regional human protection bodies. The Inter-American Commission on Human Rights (IACHR) has recently released a report on violence against LGBTI persons that mentions Costa Rica as a country in which the available data on violence against LGBTs perpetrated by security forces - including torture, degrading or inhuman treatment, excessive use of force, arbitrary detention and other forms of abuse - raises concerns.¹⁹ In 2008, the Committee against Torture expressed their concern about the abuses against trans persons, both nationals and migrants, in Costa Rica.²⁰ And in 2011 the CEDAW Committee also expressed

¹⁴ Constitutional Chamber of the Supreme Court of Justice, Verdict 2013-010404 from July 31, 2013. "Security measures" are legal measures that restrict an individual's rights while s/he is forcibly put into corrective treatment. Available (in Spanish) at: http://jurisprudencia.poder-judicial.go.cr/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&nValor2=606395&strTipM=T

¹⁵ The IIDH is an autonomous international institution of an academic nature. It was created in 1980 through an agreement signed between the Inter-American Court of Human Rights and the Republic of Costa Rica. Today it has become one of the world's leading centers for teaching and academic research on human rights, applying a multidisciplinary approach with an emphasis on the problems of the Americas. It is based in San José, Costa Rica. <https://www.iidh.ed.cr/multic/DefaultIIDHEN.aspx>

¹⁶ Instituto Interamericano de Derechos Humanos (IIDH), *Situación de los derechos humanos de poblaciones históricamente discriminadas en Costa Rica: un análisis desde el marco de la justicia*, 2013, p. 23

¹⁷ *Report of the Working Group on the Universal Periodic Review: Costa Rica*, A/HRC/13/15/Add.1, March 10, 2010, para. 9; *Draft Report of the Working Group on the Universal Periodic Review: Costa Rica* A/HRC/WG.6/6/L.14, December 30, 2009, para. 91.4.

¹⁸ Reglamento sobre fotografía para cédula de identidad (Decree No. 08-2010, La Gaceta N°. 127 July 1, 2010), Article 2.

¹⁹ Comisión Interamericana de Derechos Humanos (CIDH), *Violencia contra Personas Lesbianas, Gays, Bisexuales, Trans e Intersex en América*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, para. 130.

²⁰ *Concluding Observations of the Committee Against Torture: Costa Rica*, CAT/C/CRI/CO/2, July 7, 2008, para. 11.

its concern for the abuses and mistreatment that trans women endured at the hands of law enforcement personnel.²¹

10. Information collected by REDLACTRANS and TRANSVIDA in the course of a data collection project implemented between March and October 2015,²² confirms that physical and emotional violence perpetrated by police staff against trans women and particularly those who are also sex workers is a common occurrence.²³ Most complaints detail a particular degree of despise and viciousness in the attack. For instance, one trans woman reported that she was approached by a police officer while being engaged in sex work. He violently asked for her personal identification and then started to harass her by saying that she was "naked" and "could not be in public like that". He grabbed her by the arm, handcuffed her and then continue to physically and verbally attack her.²⁴ Other cases show physical abuses and/or beatings in different degrees,²⁵ that can also include the destruction or confiscation of the victim's belongings²⁶,expulsion from public places,²⁷ confiscation or destruction of personal identification papers,²⁸ and arbitrary detention.²⁹
11. Other reports show how the police entertains itself humiliating trans women who are also sex workers. Ridicule and/or verbal violence on the part of police personnel who move around the areas where these women work in their police vans³⁰; this includes addressing them in the male gender³¹ and using megaphones to shout insults referring specifically to their gender identity and expression.³² Another common practice is for the police vans to approach the areas where sex work is performed with their lights turned off and once they get close to the trans women, suddenly turn the lights on and threaten to roll them over.³³ Naturally, this leads to the desperate run by the women from their working area. Victims are often mistreated and abuse when trying to report a human rights violation³⁴. In other cases, the police is reluctant or flatly refuse to take down their complaints.³⁵
12. The organizations submitting this information have also documented abuses outside the context of sex work. A trans woman who was riding a bicycle was intercepted by a police van. The police officers demanded that she proved legitimate ownership of the bike. She was not carrying any documents to that end, so she was handcuffed, taken to the police van and kept in detention for several hours before being released. Her bicycle was confiscated.³⁶

²¹ *Concluding Observations of the Committee on the elimination of all forms of discrimination against women: Costa Rica*, CEDAW/C/CRI/CO/5-6, August 2, 2011, para. 40.

²² Between March and October 2015, REDLACTRANS and TRANSVIDA implemented a pilot project to compile data on human rights violations against the trans community in Costa Rica. This project was supported and funded by Heartland Alliance and its main goal was to produce evidence on these human rights violations.

²³ Excluded by the labour market, trans women often find their survival in street sex work. Data gathered by the local organization TRANSVIDA shows that 55% of those trans women who in 2015 reported human rights violations were engaged in sex work as their main source of income. This is a result of the bias existing in Costa Rican society and the lack of public policies facilitating social inclusion for the trans population according to their personal capacity and interests. It is worth mentioning that sex work is not illegal in Costa Rica but it is also not recognized as work and there are no laws regulating it. "Procuring" is penalized with 2-5 years of prison and 4-10 years in the presence of aggravating circumstances.

²⁴ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

²⁵ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

²⁶ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

²⁷ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

²⁸ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

²⁹ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³⁰ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³¹ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³² REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³³ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³⁴ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³⁵ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

³⁶ REDLACTRANS y TRANSVIDA, *Registro de violaciones y abusos de derechos humanos contra personas trans en Costa Rica*, 2015.

13. The Ombudsman Office has intervened upon request of the *travesti* community in Cartago, in the face of repeated police abuse.³⁷
14. Even though several international human rights protection bodies have called upon States to collect and disaggregate data based on the sexual orientation and gender identity of victims,³⁸ a report by non-governmental organizations CEJIL y CIPAC showed that the Police Statistics Office under Costa Rica Judicial Investigation Body (Organismo de Investigación Judicial, OIJ) fail to include parameters or disaggregate data on the basis of these criteria. The report also highlights the investigators' lack of training on LGBT issues.³⁹
15. Likewise, there is a lack of mechanisms to facilitate and guarantee the reporting of police abuses and violence and effective access to justice without any discrimination or the possibility of retaliation. Follow-up mechanisms allowing the implementation of norms and institutional support to guarantee human rights protections for LGBTI persons are also absent. The Costa Rica Ombudsman Office has a "Special Protection Directorate" that serves vulnerable populations including those with "different sexual preferences". It has been documented that this office receives very few complaints from LGBTI victims. This does not reflect a low prevalence of violence but rather a high level of invisibility and stigma — based on moral or religious grounds — suffered by this population.⁴⁰ A study conducted in 2012 on access to justice shows that complaints about discrimination based on sexual orientation and gender identity rarely move forward as the legal process is extremely complex and legal officers tend to ignore them.⁴¹

Suggested recommendations

16. To promulgate a gender identity law that acknowledges and guarantees the right to freely exercise one's gender identity for trans persons. This law must establish accessible, agile and simple legal mechanisms — preferably administrative ones — that allow trans people to change the name and sex in their personal identification documents upon request and without demanding any medical, psychiatric or psychological diagnosis, sterilization or any other invasive procedure. The law must also guarantee the confidentiality of the process and the documentation involved. It is also recommended that having legal counsel not be a requirement for a trans person to request a change in the name/gender registered in her/his personal documents. For the development of this law, Costa Rica could benefit from implementing a cooperation agreement with international human rights bodies.
17. To train law enforcement personnel on their obligations to respect and protect the human rights of trans populations.
18. To seriously investigate and eventually punish law-enforcement personnel involved in arbitrary detentions, extortions and violence against trans persons and take all necessary measures to eliminate such practices.

³⁷ Defensoría de los Habitantes de la República, *Informe Anual de Labores 2013-2014*, p.140. Available at (in Spanish): http://www.dhr.go.cr/la_defensoria/informes/labores/documentos/if2013_14.pdf

³⁸ High Commissioner's report to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity (May 2015) - A/HRC/29/23, May 4 2015, paras. 11 y 25; Comisión Interamericana de Derechos Humanos (CIDH), *Violencia contra Personas Lesbianas, Gays, Bisexuales, Trans e Intersex en América*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, para. 521.1.

³⁹ Centro por la Justicia y el Derecho Internacional (CEJIL) and Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC), *Diagnostico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica*, 2010, p. 39

⁴⁰ Centro por la Justicia y el Derecho Internacional (CEJIL) and Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC), *Diagnostico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica*, 2010, p. 39

⁴¹ Sondeo de Percepción de Los Derechos Humanos de las Poblaciones LGTB en Costa Rica. Centro de Estudios Internacionales (CEI) 2012

19. To set up mechanisms to facilitate and guarantee reporting of police abuses and violence as well as effective access to justice without discrimination or retaliation against those reporting them.
20. To establish data collection and systematization mechanisms for cases of violence against trans persons. Data collection systems must collect information from a wide variety of sources including police, forensic agencies, legal courts, prosecutors and public defender offices among others.
21. To promulgate a comprehensive anti-discrimination law explicitly including sexual orientation and gender identity as forbidden grounds for discrimination.
22. To implement a National Human Rights Plan that includes the LGBTI population's concerns.