



Bogotá D.C, December 6, 2021

Honorable,

Diego García-Sayán

Special Rapporteur on independence of judges and lawyers.

United Nations.

Geneva, Switzerland.

OHCHR-SRIndependenceJL@un.org

Subject: Submission to the report on protection of lawyers

Receive a cordial greeting,


Through this document, the **LGBTI LITIGANTS NETWORK OF THE AMERICAS** (Red de litigantes LGBTI de las Américas) represented by its technical secretary, **Karen Anaya Cortez**, submits relevant information related to the questions asked by your Rapporteurship in the *Questionnaire on the protection of lawyers in the face of the obstacles they face in the free and independent exercise of the profession*.

The **Litigants Network** arises in 2019 as an international and independent network, made up of experts and organizations that work in the defense and guarantee of the rights of LGBTI people in the American continent, through **strategic litigation, advocacy actions and communication strategies**. Some of the individuals and organizations that are part of the network have participated in litigation of emblematic cases such as *Atala Riffo and daughters vs. Chile*, *Alberto Duque vs. Colombia*, *Azul Rojas Marín and other vs. Perú* and *Vicky Hernandez and others vs. Honduras*. Its objective is to create ties of cooperation and coordination at a regional level to carry out urgent actions that allow the identification and eradication of violence and discrimination due to prejudice¹.

The purpose of this document is to provide you with information related to the obstacles that LGBTI lawyers and those who defend the rights of LGBTI people face in the Americas. To do this, we will answer questions 3, 6, 7 and 9 of the aforementioned Questionnaire and we hope that it will serve as input for the preparation of your next thematic report.

We appreciate the attention provided and we will proceed to develop what is stated in this document.

¹ The list of organizations and experts that make up the Network can be consulted at the end of this document.



Question 3: Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.

As stated by Víctor Madrigal, Independent Expert on violence and discrimination based on sexual orientation and gender identity in his report **Diversity in humanity, humanity in diversity**; In several countries, LGBTI people are still excluded from the sociocultural environment, which inevitably encourages and maintains violence and discrimination against them. LGBTI lawyers are not the exception, and they face different obstacles that not only hinder their work as Human Rights Defenders, but also put their right to life and personal integrity at risk.


In relation to the **legal barriers** that interfere with the work of LGBTI lawyers, it can be evidenced in Jamaica, Barbados, Belize and other countries of the English-speaking Caribbean, the existence of laws that **criminalize sexual relations between people of the same sex and non-normative gender identities and expressions**. The existence of these legal norms has a special impact for LGBTI Lawyers since they not only violate rights such as freedom of expression, personal integrity, equality, and non-discrimination, but also affect **their right to defend rights**², the extent that the activities for protection and promotion of LGBTI rights that they exercise place them in a situation of visibility that makes them vulnerable to violence and the criminalization of their identities.

Because of the fear of being visible, LGBTI lawyers are prevented from associating freely in organizations that promote the defense of LGBTI people rights since, they are also stigmatized as “*self-declared criminals*” due to their identity. Likewise, their exercise of the legal profession is understood as illegal, as they defend people who are criminalized by the State itself.

On the other hand, **the lack of legal recognition of gender identity** in the continent also constitutes a barrier to the exercise of the legal profession, which especially affects trans lawyers. Only in 10 countries of the region (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Panama, Peru, and Uruguay) exists a special regulation that allows the legal rectification of self-perceived gender, without the need of any surgical procedures. This contrasts with the reality of different Caribbean countries where it is not possible to change the gender marker and where any non-normative identity or expression is criminalized. In between, there are several countries in which despite of being possible the legal rectification of gender, it is necessary to accredit genital reassignment surgeries³.

² Inter-American Commission on Human Rights, Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in America. 2015.

³ Trans Legal Mapping Report 2019: Recognition before the law (Geneva: ILGA World, 2020)



Bearing this in mind, the lack of regulations for the legal recognition of gender identity and the bureaucratic barriers that still persist in some countries where these laws already exist, are an obstacle to professional practice, especially in the case of trans lawyers. The law schools, when issuing the diploma degree that certifies the graduate as a lawyer, use the names and sex that appear on their identity documents, despite the fact that these do not represent the gender identity of trans people. And even when trans people make the respective correction in their data so it reflects their gender identity, the Universities refuse to correct the certificate issued, as was the case of the writ of protection initiated by **Aleix Jai López**⁴ (Annex 1), who Through a judicial ruling, managed to get the Mariano Gálvez University of Guatemala to recognize him as a lawyer, respecting his gender identity as a trans man.

A similar problem is posed by the States that require those who graduate to have an enabling card that accredits them as legal professionals and will allow them to practice the profession. For trans people who cannot change their identification documents according to their gender identity is impossible to comply with this formality, or who, even making said correction, due to the negligence of public servants, cannot correct the information on the certificate of professional qualification. Consequently, they cannot practice as lawyers even when they have the necessary knowledge to carry out this work due the discord between their data and their identity.

It should also be noted that practicing the profession with accreditations, cards or titles that do not consider the gender identity of a trans lawyer, exposes the person to situations of violence and discrimination in the exercise of the profession. As stated by the Independent Expert on violence and discrimination based on sexual orientation and gender identity, Víctor Madrigal, *“inaccuracies or discrepancies in identity documents can increase levels of violence, extortion, exclusion from the formal labor market and access to other services”*⁵


Along the same line, we must emphasize that the impact of this situation is also manifested in the exclusion and structural discrimination that is generated in the labor market where low figures of employability of the trans population in formal jobs are reflected. For instance, in Uruguay 23% of trans and gender diverse people have formal jobs and in Argentina, it is estimated that only 10% of the trans population is in the labor market⁶.

Considering this, the professional disqualification, or the lack of a university degree in the case of trans lawyers, prevents them from having access to formal employment in the field of law despite having studied. This limits their access to resources, truncates their life project, and does not allow them to practice the profession freely and under equal conditions.

⁴ Juzgado primero de primera instancia civil constituido en tribunal de amparo.2020. Amparo no. 01045202001093. Juez Lucrecia Gamboa de Valvert.

⁵ Report of the independent expert on protection against violence and discrimination based on sexual orientation or gender identity, 2018, A / HRC / 38/43, UN

⁶ IACHR. Report on Trans and Diverse Gender People and their economic, social, cultural, and environmental rights. 2020.



A latent obstacle for LGBTI lawyers is the political climate in the region at the moment. With the beginning of the new decade, the majority progressive governments of Latin America were replaced by a group of politicians, mostly conservatives, protectors of religious values and with neoliberal government agendas in which privatization and budget cuts for policies public have been the flagship proposals.⁷ This has resulted in the government's misread of the organizations in which LGBTI lawyers are an active part as destabilizing elements of public order, which is why in some cases they are politically persecuted.

To this context, we must add the hate speech by public authorities that defend fundamentalist and anti-rights proposals, who have been linked with conservative and religious movements to politically legitimize discriminatory and violent actions against the LGBTI community; appealing to the danger of the inclusion of what they have called the “*gender ideology*”⁸ in the regulations and state public policies.

Some examples of this situation were the statements of the now president of Brazil, Jair Bolsonaro, who during his electoral campaign in 2018 stated that he would be incapable of loving an homosexual son and that he would prefer that he died in an accident, or the former Colombian procurator and now Ambassador of this country to the OAS, Alejandro Ordoñez, who attacked the Constitutional Court of Colombia for approving equal sex marriage, saying that the family and marriage institutions had been buried with this judicial decision.

This hostile climate towards LGBTI people is even stronger for the lawyers of this community, who, in addition to being attacked in their personal sphere, must face violent and discriminatory situations every day to defend and promote the rights of LGBTI people. This implies constantly having to confront institutional violence exerted by governments that seek at all costs to obstruct its causes.

Furthermore, considering this context, LGBTI lawyers are defamed for allegedly defending ideologies or immoralities, which hinder their work on defense and promotions of human rights getting fully recognized, valued, and protected. In Colombia, for example, it has been reported that since 2016, as a result of the appearance of groups such as “*Con Mis Hijos No Te Metas*” (translation: *don't mess with my children*), the stigmatization of LGBT lawyers who work for the inclusion of a gender approach in the educational system has worsened. These lawyers and the organizations to which they belong were stigmatized for promoting the supposed “*gender ideology*” in schools in Bogotá where they were even threatened to call representatives of the churches⁹.

Question 6: Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment, or improper interference, whether from State authorities or non-

⁷ Center for Legal and Social Studies (CELS) Human Rights in Argentina: Report 2019. Buenos Aires. 2019

⁸ Center for Legal and Social Studies (CELS) Human Rights in Argentina: Report 2019. Buenos Aires. 2019

⁹ Information provided by Colombia Diversa.

State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

In relation to obstacles, acts of discrimination and violence perpetrated by state agents in Honduras¹⁰, lawyers claim to have been arbitrarily detained by the police in the framework of the protests generated during the pandemic while exercising their work as human rights defenders. Despite initiating the complaint process on these events, only the first investigative steps were carried out. Likewise, in Argentina, lawyers who work in the area of sexual diversity of the judicial power affirm that there is a glass ceiling that affects LGBTI workers because the cases they work on are seen as issues of activism and not as responsibilities of the State.¹¹

Besides this, discriminatory acts by individuals have also been reported. In Ecuador, one of the lawyers who, with his organization, promoted equal sex marriage, was accused by a television journalist of trying to legalize pedophilia¹². Another of the harassment behaviors that are evidenced are the complaints made by anti-right groups, either for prevarication (accusing state authorities that take favorable decisions for LGBTI people) or lawyers (for the commission of alleged crimes such as defamation and slander). Although these complaints are often dismissed by local courts, conservative groups use them to obstruct and stigmatize the work of LGBTI defenders.

On the other hand, in Colombia, virtual harassment against LGBTI lawyers who work promoting the decriminalization of abortion has also been reported. In particular, they point out that the “*pro-life*” movements have sent chain messages to groups of lawyers and other activists showing them explicit images of fetuses and hate messages.

Question 7: What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.


At the regional level, before the creation of the **LGBTI Litigants Network of the Americas**, there is no evidence of a broad articulation space focused on litigation and collective actions by jurists from different organizations in the American continent that seek to combat discrimination and violence towards LGBTI people. Understanding this need for cooperation and coordination in the region, the **LGBTI Litigants Network** has been established as a space that promotes the exercise of the legal profession by LGBTI lawyers and provides them with support for a better development of their rights defense work.

In the same direction, at the national level, the articulation between the different organizations allows them to face, through collective actions, both discrimination and violence based on expression, gender identity or sexual orientation, in the exercise of the profession. An example of this is Brazil, in

¹⁰ Information provided by the Lesbian Network Cattrachas

¹¹ Information provided by Abogades por los Derechos Sexuales, Abosex.

¹² Information provided by Pakta Ecuador.




which the association "GADvS - Grupo de Advogados pela Diversidade Sexual e de Gênero" has been able to join with other organizations such as ABGLT, ANTRA and Madres por la Diversidade, to work together on the difficulties that as advocates of LGBTI rights face.

Question 9: Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.

The organizations that make up this **Network** propose the following recommendations to the States to protect and guarantee the free exercise of LGBTI Lawyers:

- a. Urge the States to repeal the regulations that criminalize sodomy, gross indecency and non-normative gender expressions and identities, which will reduce the criminalization and stigmatization of LGBTI lawyers as well as open a pluralist and democratic panorama in the practice of Law and in the human rights defense.
- b. Urge the States to issue gender identity laws that allow trans people and people of diverse gender, to change their data in their legal documentation, titles, and professional qualification cards, and thus be able to practice the profession of Lawyers in equality of conditions
- c. Countries that already have regulations that guarantee and protect gender identity are recommended to eliminate bureaucratic procedures and reduce the cost for this type of process, so that they are accessible mainly to people with low economic resources.
- d. The implementation of public policies that provide tools to combat discrimination against LGBTI people, through social pedagogy in education, employment, communications (news, newspapers, and others), in public spaces, among others. This will make it possible to sensitize and deconstruct the heterocisnormative model that prevails in society and under which people who defend the rights of LGBTI persons are stigmatized.
- e. Request the States to collect official data that reveal the situation of homobiphobic violence of which LGBTI lawyers who carry out activities for the defense and promotion of Human Rights are victims.
- F. Demand the States the application of all existing international standards on the protection of Human Rights defenders for LGBTI lawyers, who, despite not being commonly recognized as such, daily carry out work to defend and promote the rights of a social group, which has historically been discriminated and violated, and to which they also belong. To that extent, they should receive special protection and support from the State for the exercise of the legal profession.



For any additional information, you can contact the LGBTI Litigants Network of the Americas (**Red de Litigantes LGBTI de las Américas**) at karen.anaya@colombiadiversa.org and litiganteslgbtamericas@gmail.com.



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Technical secretary

LGBTI Litigants Network of the Americas (Red de Litigantes LGBTI de las Américas)

List of Organizations that make up the Network of LGBT Litigants of the Americas

- Argentina - Abogades por los Derechos Sexuales (AboSex)
- Argentina - CELS (Centro de Estudios Legales y Sociales)
- Bolivia - IGUAL
- Brasil - GADVS - grupo de abogados para la diversidad sexual y de género
- Brasil - Rede Feminista de Juristas - deFEMde
- Chile - Asociación OTD Chile
- Chile - Fundación Iguales Chile
- Colombia - Asociación Líderes En Acción
- Colombia - Dejusticia
- Colombia - Colombia Diversa
- Colombia - Diversas Incorrectas
- Colombia - Fundación Grupo Acción y Apoyo a personas Trans - GAAT
- Ecuador - Fundación Pakta
- EE. UU - Synergía - Initiatives for Human Rights

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- EE. UU – Robert F. Kennedy Human Rights
 - Honduras – Red Lésbica Cattrachas
 - México - Amicus DH, A.C.
 - México - Equis justicia para las mujeres AC
 - México - Letra eSe
 - México - Red de Juventudes Trans México
 - Panamá, Fundación Iguales
 - Perú – Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX)
 - Perú – TRANSformar

List of Independent Members of the LGBTI Litigation Network:

Argentina - Eleonora Lamm

Argentina – Laura Saldivia Menajovsky

Bolivia - Álvaro Becerra Sánchez

Costa Rica - Michelle Jones

México- Selma Irais Maxinez Sánchez

Perú – Carlos J. Zelada

Perú - Fhran Kyael Medina Zavala

Perú - Johana Larizza Sotelo Morales

Venezuela y EE.UU - Fanny Gómez Lugo

International Allies:

- Aliada Internacional - Human Rights Watch
- Canadá - Abogados sin fronteras Canadá