



“Not Worth a Penny”

Human Rights Abuses against Transgender People in Honduras

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Map of Honduras



Glossary of Key Terms

This report will discuss identities and terms that may be unfamiliar to some readers:

- We use **gender identity** to refer to a person's internal, deeply felt sense of being male or female, or something other than or in between male and female; **gender expression** refers to the external characteristics and behaviors which societies define as “masculine” or “feminine”—including such attributes as dress, appearance, mannerisms, speech patterns, and social behavior and interactions.
- **Transgender people** are people whose gender identity or gender expression differs from the physical characteristics (or “sex”) of their body at birth. Understanding their experiences means recognizing how *gender* is not the same as *biological sex*. *Biological sex* is the classification of bodies as male or female on the basis of biological factors, including hormones, chromosomes, and sex organs. *Gender* describes the social and cultural meanings attached to ideas of “masculinity” and “femininity.” In this report “transgender” is used as an umbrella term to include transsexual, *travesti*, and transgender people.
- **A Transsexual** is someone who has undergone or is in the process of undergoing hormone therapies and the complex of cosmetic and reconstructive procedures usually known as sex reassignment surgery (SRS) so that their physical sex corresponds to their internal gender identity.
- **Transphobia** is fear of and prejudice toward transgender people based on the expression of their gender identity, or their contravention of cultural and social norms of gender.
- **Travesti** is a word used in Latin America to describe someone who was designated “male” at birth and whose gender identity is female; a *travesti* may decide to alter their body or not.

I. Summary

Two policemen grabbed me and put me in a car and punched me in the face. They took us to the [Manchén] police station and shoved us into the cells.... From the moment they pulled us out of the car at the station till they got us inside, they hit us and dragged us all. When we got there and while they put our names in a book, they pushed us to the floor, and hit our faces and hit us with batons. They also tried to push us down the stairs. They called us culeros [faggots]. On the way to the cell one of them [police officers] broke a broomstick against my back.

— Joshua, age 19, Tegucigalpa, December 5, 2008

In June 2008, Honduras supported a *Resolution on Human Rights, Sexual Orientation, and Gender Identity* unanimously adopted by the General Assembly of the Organization of American States (OAS). Honduras, with the rest of the OAS, expressed its concern over violence faced by people because of their sexual orientation or gender identity and made a public commitment to end it.

In June 2009, Honduras is hosting the 39th General Assembly of the OAS in San Pedro Sula under the theme “Toward a Culture of Non-Violence.” In the proposed draft resolution, the states declare their commitment “to promote, within a framework of the rule of law, a culture of peace and non-violence” and specifically note “the importance of adopting measures necessary to prevent, impede, and punish violence ... against women, and groups in vulnerable situations.”

While Honduran authorities have been prompt in signing international agreements pledging to curb violence and protect vulnerable groups, attacks on transgender people—often targeted because their looks and demeanor challenge prevailing sex-role stereotypes—continue to be commonplace in the country.

Nearly every transgender person Human Rights Watch interviewed during research in Honduras in late 2008 and early 2009 spoke of harassment, beatings, and ill treatment at the hands of police. And bias-motivated attacks on transgender individuals by private actors are endemic. At least 17 *travestis* have been killed in public places in Honduras since 2004; many more have been beaten, stabbed, or shot.

Transgender people also spoke of police inaction and failure to investigate cases that they have registered with the police.

The problems begin with Honduran law itself. Provisions of one of the key laws governing policing in Honduras, the Law on Police and Social Affairs (Ley de Policía y de Convivencia Social), are vaguely worded and all but invite arbitrary enforcement by the police.

Article 99 of the law mentions categories of people that police can arrest as “vagabonds”; these include “street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers.” Article 142 gives police the authority to arrest anyone who “exhibits total nudity or goes against modesty, proper conduct and public morals ... and disturbs the neighbors’ tranquility with their immoral conduct.” The law does not give further explanation of these terms. No jurisprudence exists to detail the understanding of them.

As this report documents, police often use these provisions to justify harassing and arbitrarily arresting transgender people. The provisions also encourage arrests by Honduran police of transgender people engaged in sex work, itself not a crime under Honduran law.

Honduras has an obligation under international law to apply its laws in an impartial and non-discriminatory manner. Courts in other Latin American countries, like Colombia and Argentina, have struck down comparable laws on the grounds that concepts like “public morals” are too vague and invite discriminatory treatment.

Another factor contributing to ongoing violence against transgender people is impunity. Inefficiency and ineffectiveness in police investigations runs like a thread through all Honduran criminal investigations but they are a particular problem in cases involving violence against transgender people. We are aware of no successful prosecutions of police accused of violence against transgender people over the past five years in Honduras. No one has been prosecuted for any of the 17 murders of transgender people.

When cases are not properly investigated and perpetrators are not adequately punished, the government sends a message to society that it condones violence. It also sends a message to victims that initiating complaints will not result in convictions and redress. State inaction in response to attacks on transgender people in Honduras feeds the violence, and encourages discrimination against them by state and non-state actors.

The government of Honduras should ensure that all attacks against members of the transgender community are investigated and the perpetrators brought to justice. The

National Bureau for Criminal Investigation (Dirección Nacional de Investigación Criminal, DNIC) and the Office of the Attorney General should respond effectively, efficiently, and without prejudice to claims by transgender people. The Ombudsman's office should provide follow-up on these cases and continue to be a forthright voice in support of transgender, lesbian, gay, and bisexual (TLGB) people in Honduras.

By supporting the OAS *Resolution on Human Rights, Sexual Orientation, and Gender Identity* in 2008, Honduras made a commitment to protecting transgender people, which should now be matched by specific actions. Honduras prides itself on its young democracy. As such it should reaffirm equality, non-discrimination, and the promotion and protection of human rights for all its people. Transgender people in Honduras repeatedly told Human Rights Watch that all they wanted was for people to see and treat them as human beings. It is the international obligation of the Honduran state to ensure that this happens, and to act upon its commitments made in the OAS General Assembly.

Key Recommendations

Honduras' specific public commitments to ending violence on the grounds of gender identity and expression should translate into concrete actions that diminish violence against transgender people.

Honduras should end violence against transgender people by law enforcement officers and ensure investigations and prosecutions of state and non-state perpetrators of violence against transgender people.

Honduras should repeal provisions of the Law on Police and Social Affairs that penalize public conduct on arbitrary and vaguely defined grounds. Authorities should send a clear message to all law enforcement institutions that violence against transgender people, as well as gay, lesbian, and bisexual people, will not be tolerated. Honduras should also conduct independent, impartial, and effective investigations into the general phenomenon of this violence and into specific allegations of police brutality, extortion, and ill-treatment against transgender people, leading to the identification and prosecution of the perpetrators.

Honduras should ensure full respect for and protection of the human rights of transgender people in police stations when they are arrested.

Honduras should guarantee protection against cruel and inhuman treatment of transgender people in police stations. The government should ensure that transgender people, if arrested, are registered under their chosen and their legal name at the police stations and

assure that they are placed in facilities appropriate to their needs. The Office of the Attorney General, as well as non-governmental organizations that document violence in detention settings, should pay special attention to the vulnerabilities of transgender people.

Honduras should enact legislation that provides specific protections on the grounds of sexual orientation, and gender identity and gender expression.

Anti-discrimination legislation that specifically identifies the people it is intended to protect is often more effective than broadly worded legislation that needs to be interpreted to provide such protections. Honduras should include gender identity and expression and sexual orientation as grounds for non-discrimination, including by passing comprehensive anti-discrimination legislation that specifically includes these as protected categories.

Methods

This report is based on research conducted during two two-week field visits to Honduras in December 2008 and in February 2009, as well as prior and subsequent research, including phone interviews. Overall, Human Rights Watch conducted in-depth interviews with 35 people who were victims of or eyewitnesses to discrimination and physical violence targeting transgender people, in Tegucigalpa, San Pedro Sula, and La Ceiba, the three major cities in Honduras. Human Rights Watch interviewed other victims who did not want their stories to be included in the report for security reasons. Human Rights Watch also interviewed the Honduran minister of security, leading officers in the Office of the Attorney General, and five high ranking police officials in Tegucigalpa and San Pedro Sula, as well as United Nations officials, human rights NGO leaders and activists, and academics.

The names of some interviewees and certain identifying information have been withheld at their request to protect their privacy and safety.

Interviewees were identified largely with the assistance of the Honduras nongovernmental organizations (NGOs) Unidad Color Rosa (Collective TTT) in San Pedro Sula, which provides information and services to transgender people, and the Tegucigalpa-based Lesbian Collective Cattrachas. All documents cited in this report are either publicly available or on file with Human Rights Watch.

The report focuses on transgender people, in particular male-to-female (MTF) transgender individuals, because of their particular vulnerability to police abuse and violence. Human Rights Watch interviewed one self-identified female-to-male (FTM) transgender person, who stated that he had not had problems with the police. Human Rights Watch attempted to

locate other FTM transgender people, but without avail. This report does not address human rights abuses targeting lesbian, gay, and bisexual identities, as such violations merit separate and distinct treatment. A Human Rights Watch researcher fluent in Spanish conducted all of the interviews.

II. Background

Transgender people in Honduras are under fire everywhere. In a country where poverty and violence are endemic, the transgender community is at steady risk of abuse and harassment. A culture of deep-rooted patriarchy and religious conservatism creates an atmosphere of intolerance that many times breeds violence. Laws in place are not enough to protect transgender people: in some cases, the laws promote harassment.

Honduras has an estimated population of nearly 7.6 million people.¹ Approximately half of the population (3.5 million) lives in urban areas.² According to the national Poverty Reduction Information System (Sistema de Información de la Estrategia para la Reducción de la Pobreza, SIERP), approximately 65 percent of the population is poor and 45 percent live in extreme poverty.³

Honduras has extremely high rates of violence, including many recorded cases of violence committed by the police. The Violence Observatory of the National Autonomous University in Honduras puts the homicide rate at 57.9 per 100,000 inhabitants (by comparison, the murder rate in Guatemala is 45 per 100,000 and in New York City, seven per 100,000).⁴ The Observatory also registered 6,609 cases of physical injury. In 378 of the recorded cases of physical injury, the aggressors were members of the police.

According to the Honduras-based Center for the Prevention, Treatment, and Rehabilitation of Torture Victims and their Families (El Centro para la Prevención de la Tortura, CPTRT), between 2006 and 2008, police ill-treated 70 percent of the people they detained. The report also found that 99 percent of the detainees are not allowed to make a phone call, denying their right under the law.⁵

¹ National Institute of Statistics, “Multiple Purpose Permanent Survey of Homes,” 2007, <http://www.ine-hn.org/sociales/encuestas/ine/ephpm/septiembre07/surveyo/index.html> (accessed March 15, 2009).

² Ibid.

³ Honduras, Sistema de Información de la Estrategia de la Reducción de la Pobreza “SIERP,” <http://www.sierp.hn/sierp.web/site/Globaltable.aspx> (accessed March 31, 2009).

⁴ Tegucigalpa reported 3,574 murders in 2007 and 4,473 killings in 2008 in Honduras (313 were women and 4,160 were men). Of the total, 735 took place in San Pedro Sula, 675 in Tegucigalpa, and 262 in La Ceiba. The remaining 2,801 took place outside the capital cities.

⁵ CPTRT, “Intermediary Report on Arbitrary Detentions in Police Stations and the Unconstitutionality of the ‘Law on Police and Social Affairs’” (Informe Intermediario de las ONG Sobre Detenciones Arbitrarias en las Postas Policiales e

In 2001, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions visited Honduras. The Rapporteur received information about the murders of at least five transgender people in San Pedro Sula and the killings of over 200 members of the lesbian, gay, bisexual, and transgender (LGBT) communities between 1991 and 2001. He noted the lack of investigations into the patterns of abuse. Honduran officials did not respond to his report⁶ In 2005 the UN Special Rapporteur on violence against women sent several urgent appeals to Honduras related to attacks on and killings of transgender people. Officials never responded.⁷

Domestic NGOs have also reported on the violence transgender people face in Honduras. In a 2004 shadow report on Honduras' compliance with the International Covenant on Civil and Political Rights (ICCPR), the Center for Human Rights Research and Promotion (Centro de Investigación y Promoción de los Derechos Humanos, CIPRODEH) documented regular raids against and detention of LGBT people and transgender people in sex work as a violation of article 2(1) of the ICCPR.⁸ In 2006, in shadow reports to the UN Human Rights Committee (HRC), various national and international human rights organizations also pointed to violations of the rights of transgender people.⁹

International and national bodies, as well as this report, confirm that in Honduras transgender people are constant victims of violence at the hands of the police as well as private actors. Such abuses take place in an atmosphere of general violence in Honduras, where approximately 90 percent of violations by the police are not investigated.¹⁰ The violence and absence of thorough investigations into attacks have a particular impact on transgender people, who already face marginalization and social stigma. "The community is terrified," said Indyra Mendoza, a lesbian activist working closely with the community, after

Inconstitucionalidad de la Ley de Policía y Convivencia Social), October 2008, http://www.wola.org/index.php?option=com_content&task=viewp&id=842&Itemid=2 (accessed April 1, 2009).

⁶ "Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions," A/57/138, July 2, 2002 (accessed April 2, 2009).

⁷ Commission on Human Rights, Report of the Special Rapporteur Ms. Asma Jahangir, Mission to Honduras, (Fifty-ninth session, 2002), E/CN.4/2003/3/Add.2, para. 68, <http://www.scribd.com/doc/12681097/UN-Special-Rapporteur-Asma-Jehangir-Report-on-India> (accessed on April 23, 2009); Special Rapporteur on violence against women, its causes and consequences, *Addendum Communications to and from Governments*, E/CN.4/2005/72/Add.1, March 18, 2005, para. 180 (accessed on April 23, 2009).

⁸ Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), *Shadow Report on Honduras Progress in the Compliance of the International Covenant on Civil and Political Rights*, August 2004 (on file with Human Rights Watch).

⁹ Cattrachas, Comunidad Gay Sampedrana, Foro nacional de VIH/SIDA, Grupo KUKULCAN, Grupo Arcoiris, and IGLHRC, *Shadow Report on Lesbian, Gay, Bisexual and Transgender Rights in Honduras*, September 2006 (on file with Human Rights Watch).

¹⁰ Friedrich Ebert-Institute Foundation, *Security and Democracy*, March 2006, p. 108 (on file with Human Rights Watch).

the latest death of a transgender activist.¹¹ “They [transgender people] do not trust the police or the judicial system.”¹²

Relevant Domestic laws

The substantial power and discretion given to the police in provisions of the 2002 Law on Police and Social Affairs facilitate police abuse and arbitrary detentions of transgender people.¹³ All transgender individuals are at risk of police abuse and detention, whether they engage in sex work or not.¹⁴ Sex work is not itself illegal in Honduras, but legislation has created grey areas that police can use to arrest people they believe are “morally” dubious, and they often include transgender people in this area. Those engaged in sex work have a compound fear of being prosecuted on the grounds of both their identity and of their work. Meanwhile, article 321 of the Criminal Code, which affords general protections against discrimination, is rendered ineffective by stigma and by the neglect that surrounds violence against transgender people.

Law on Police and Social Affairs

According to article 5 of this law, enacted in 2001, police should “preven[t] and eliminat[e] disturbances to tranquility, public morality, and proper conduct.”¹⁵ Article 142 (3) of the law includes specific provisions that give power to the police power to arrest anyone who “exhibits total nudity or goes against modesty, proper conduct and public morals ... and disturbs the neighbors’ tranquility with their immoral conduct.”¹⁶

Article 99 of the law includes sanctions against particular groups of people—including “vagabonds,” defined as “people who have no honest known means of living; thus vagabonds include: street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers.”¹⁷

¹¹ Human Rights telephone interview with Indyra Mendoza, January 10, 2009.

¹² *Ibid.*

¹³ Law on Police and Social Affairs (Ley de Policía y Convivencia Social), Decree No. 226-2001, www.poderjudicial.gob.hn (accessed April 3, 2009).

¹⁴ The Criminal Code does criminalize smuggling and trafficking in article 149.

¹⁵ Law on Police and Social Affairs, article 5. Article 1 also requires that police “safeguard the fulfillment of the laws and regulations that aim to protect the life, honor, well-being and beliefs of the people; maintain public order...; restore domestic order...; [and] preserve public morality [and] health as well as historical and cultural heritage.”

¹⁶ *Ibid.*, arts. 16(3) and (9).

¹⁷ *Ibid.*, art. 99.

There is no further explanation within the law, nor are there judicial decisions narrowing the definition of what actions go “against modesty, proper conduct and public morals” or what behaviors suffice to make someone a “street person,” a “scoundrel,” a “street prostitute,” a “drug addict,” a “drunkard” or a “gambler” warranting arrest.¹⁸

The Center for the Prevention, Treatment, and Rehabilitation of Torture Victims and their Families (CPTRT), a human rights group in Honduras, considers the law unconstitutional because its ambiguous terms and definitions remove restraints on arbitrary exercise of power, and invite not just arbitrary but discriminatory application by the police. CPTRT is also concerned that this law promotes an atmosphere of terror among targeted groups.¹⁹

The vagueness of the language affords people no understanding of what acts are prohibited. As shown below, these open-ended clauses frequently lead to discriminatory and arbitrary treatment of transgender people, prohibited under international law.²⁰

Comparable laws are found in a few other countries in the region, including in some states in México and some provinces in Argentina, and in Guatemala.²¹ In other Latin American countries, however, judges have declared similar laws containing “public morality” and “proper conduct” infractions unconstitutional, on the grounds that such concepts are too broad and invite discriminatory treatment.²²

¹⁸ See Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, June 3-14, 1996, A/CONF.165/14, paras. 53-241 (1996). In the United States such laws violate the eighth amendment. See *Robinson v California*, 370 US 660 (1962).

¹⁹ Jenny Almandares, “Análisis de la Ley de Policía y Convivencia Social,” www.cptrt.org/pdf/Ley%20De%20Policia%20y%20Convivencia%20Social.pdf (accessed April 2, 2009).

²⁰ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Honduras on August 25, 1997, articles 2 and 26.

²¹ A 2005 report by the Mexican National Commission to Prevent Discrimination (CONAPRED) found that over 75 cities in Mexico had regulations on “public morals.” It also found that in some states police used these laws disproportionately against LGBT people. See Immigration Board of Canada, “Issue Paper Mexico: Situation of Witnesses to Crime and Corruption, Women, Victims of Violence and Victims of Discrimination based on Sexual Orientation,” http://www2.irb-cisr.gc.ca/en/research/ndp/ref/index_e.htm?docid=291&cid=0&sec=CH05 (accessed April 28, 2009); See Colectivo Homosexual de Argentina, “Report on the Legal Situation of the LGBTI Community” (on file with Human Rights Watch).

²² See Juzgado Correccional de Necochea, Buenos Aires Province, Case No. 4493, Gustavo Fabián, September 2006, <http://www.derechopenalonline.com/derecho.php?id=30,447,0,0,1,0>, whereby the court declared article 72 of Law-Decree 8031/73 unconstitutional. Article 72 included drunkenness in a public place as a contravention sanctioned with a fine and arrest of up to 40 days. According to the court, “the State cannot impose upon the rest of society a moral model that individuals must follow.” Meanwhile, the Colombian Constitutional Court has held that public morals laws should be analyzed under a strict proportionality study. “Therefore, only if the end truly corresponds to a principle of public morals and if it is useful, necessary and strictly proportional to its end, would the law be constitutional.” It added, “criminal sanctions that limit personal liberty cannot be founded exclusively on the defense of public morals principles.” Such laws that predicate

Many organizations have pointed out the far-reaching effects of the Law on Police and Social Affairs on the LGBT community, and on transgender people in particular. The 2006 shadow report to the UN Human Rights Committee by several national and international organizations included examples of transgender people arbitrarily detained, harassed, and beaten under these laws.²³ The Human Rights Committee, which monitors compliance with and adjudicates violations under the ICCPR, has found that article 26 of the ICCPR bars acts and policies that are discriminatory in *effect*, as well as those that *intend* to discriminate.²⁴ With regard to El Salvador, for example, the Human Rights Committee expressed concern over “provisions (such as the local ‘contravention orders’) used to discriminate against people on account of their sexual orientation.”²⁵

These provisions place a group of people in a situation of greater risk of violence and ill treatment. The UN Committee against Torture, charged with investigating complaints pertaining to the Convention Against Torture—ratified by Honduras in 1996—has manifested its concern over such laws²⁶ and called on states to eliminate similar criminal provisions that invite discriminatory application or enable arrests based on prejudice.²⁷ This body has also called for comprehensive and disaggregated data on complaints of ill treatment and torture by law enforcement personnel, including on the grounds of sexual orientation and gender identity.²⁸

themselves on an appeal to public morals but fail to recognize superior constitutional principles are unconstitutional. See Decision C-404/98, Colombian Constitutional Court, August 10, 1998, pgs. 32-34.

²³ “Shadow Report on Lesbian, Gay, Bisexual and Transgender Rights in Honduras,” September 2006, (on file with Human Rights Watch).

²⁴ Human Rights Committee (HRC), “General Comment 18: Nondiscrimination,” 37th Session, 1989, HRI/GEN/1/Rev.1, p. 26.

²⁵ HRC, “Concluding Observations: El Salvador,” CCPR/CO/78/SLV, July 22, 2003, para. 16.

²⁶ See CAT, *Conclusions and recommendations of the Committee against Torture: Costa Rica*, CAT/C/CRI/CO/2, July 7, 2008. “The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16),” <http://daccessdds.un.org/doc/UNDOC/GEN/Go8/428/93/PDF/Go842893.pdf?OpenElement>, para. 11 (accessed April 29, 2009).

²⁷ See CAT, *Conclusions and recommendations of the Committee against Torture: Egypt*, CAT/C/CR/29/4, December 23, 2002, para. 6: “The Committee recommends that the State party: ... (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”

²⁸ CAT, “Conclusions and Recommendations of the Committee against Torture: Estonia,” CAT/C/EST/CO/4, <http://daccessdds.un.org/doc/UNDOC/GEN/Go8/405/46/PDF/Go840546.pdf?OpenElement>, para. 25 (accessed April 20, 2009).

Detentions under the Law on Police and Social Affairs are ongoing.²⁹ In this report, Human Rights Watch documents cases between 2006 and 2009 in which the police used this law to harass and detain transgender people, who arguably find themselves at the bottom of the heap of “vulnerable groups” facing aggression and violence by the police. Male-to-female transgender people in particular may suffer aggravated and compounded violence when they are believe to engage in sex work.³⁰

The application of the Law on Police and Social Affairs in a discriminatory manner violates prohibitions on discrimination under articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR).³¹ It also undermines Honduran legislation that governs police responsibilities and obligations.

Article 2 of the National Police Organic Law states that policing in Honduras is “grounded on principles of legality, continuity, professionalism ... equality, solidarity ... all under the outmost respect for human rights.”³² The same law places obligations and prohibitions on police, and sets forth consequences for violating them.³³ The Law on Police and Social Affairs in practice counteracts these protections. Its vague language furnishes policemen wide leeway to act. The lack of clear prohibitions and sanctions for the police in this law means police officers have less fear of consequences.

Honduras Criminal Code

Article 321 of the Criminal Code sanctions with 3-5 years in prison and a fine between 30,0000 – 50,0000HNL [US\$1,500-2,600] anyone who discriminates on the grounds of “sex, race, age, class, religion, political or party militancy, disability or any other that harms human dignity.”³⁴ This article does not specifically mention sexual orientation or gender identity and gender expression as protected grounds. Yet, the inclusion of “sex” and

²⁹ Human Rights Watch interview with Javier Medina (KuKulcán), Tegucigalpa, December 10, 2008; Human Rights Watch interview with Donny Reyes (Arcoiris), Tegucigalpa, February 17, 2009; Human Rights Watch interview with Ramón Valladares (CGS), San Pedro Sula, February, 19, 2009.

³⁰ Sex work is not illegal in Honduras and there are no regulations in place of places where people may or may not engage in sex work.

³¹ *Nicholas Toonen v Australia*, 50th Sess., Communication No. 488/1992, CCPR/c/50/D/488/1992, April 14, 1994, para 8.7. In the 1994 case of *Nicholas Toonen v Australia*, the UN Human Rights Committee, which monitors compliance with and adjudicates violations under the ICCPR, heard a complaint concerning a “sodomy law” punishing consensual, adult homosexual conduct in the Australian state of Tasmania. The Committee held that “sexual orientation” was a status protected under the ICCPR from discrimination, finding that “the reference to ‘sex’ in articles 2, paras. 1, and 26 is to be taken as including sexual orientation.”

³² National Police Organic Law, Decree No. 67-2008, Gazette No. 31,749, October 31, 2008.

³³ *Ibid.*, articles 24, 27, 32, and 33.

³⁴ Honduras Criminal Code, Decree Number 144-83, entered into force on September 26, 1983.

“human dignity” as protected categories may (in the light of UN precedents) be interpreted to include sexual orientation and gender identity.³⁵

However, specific inclusion of gender identity and gender expression (as well as sexual orientation) in the law would make explicit the protection of transgender people. The UN Human Rights Committee has urged states to pass anti-discrimination legislation that expressly includes sexual orientation as a protected status.³⁶

Police Overview

Honduras has three main police forces: the National Preventive Police; the National Bureau for Criminal Investigation (DNIC); and the Municipal Police. The National Preventive Police is present in cities throughout Honduras. Its role is to prevent crime and guarantee people’s individual and collective safety.³⁷ Local authorities organize the Municipal Police force, like the one found in San Pedro Sula. The Municipal police coordinated at the central level and have similar responsibilities to the National Preventive Police.³⁸ The DNIC is charged with investigation tasks in criminal procedures and is coordinated by the Office of the Attorney General.³⁹

Police receive basic human rights training in the Police Academy.⁴⁰ Police in Tegucigalpa and San Pedro Sula also told Human Rights Watch that they regularly receive human rights trainings from various NGOs but suggested that, in fact, these trainings may have a religious bent that excludes mention of certain vulnerable groups, including the transgender community. Commissioner Marthel Valle said he opened the door to sessions with human rights and Christian groups. “The Christian groups, like Jimmy Hughes Ministries [an

³⁵ See *Nicholas Toonen v Australia*, 50th Sess., Communication No. 488/1992, CCPR/c/50/D/488/1992, April 14, 1994, para 8.7.

³⁶ “Concluding Observations of the Human Rights Committee: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28; “Concluding Observations of the Human Rights Committee: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22; “Concluding Observations of the Human Rights Committee: Trinidad and Tobago,” CCPR/CO/70/TTO, November 3, 2000, para. 11; “Concluding Observations of the Human Rights Committee: Poland,” Human Rights Committee, 66th Session, CCPR/C/79/Add.110, para. 23.

³⁷ National Police Organic Law, Decree No. 67-2008, Gazette No. 31,749, October 31, 2008.

³⁸ *Ibid.*, article 102.

³⁹ The DNIC was formerly known as the General Bureau for Criminal Investigation (DGIC). Its name changed in November 2008.

⁴⁰ Human Rights Watch interview with Ambrosio Ordoñez, Chief of Metropolitan Police in Tegucigalpa, Tegucigalpa, February 23, 2009; General Police Commissioner Mirna Suazo, oral presentation at the *First National Congress of Trans People on Human Rights and Universal Access*, December 5, 2008. The curriculum includes a human rights module based on a guidebook by the nongovernmental organization CIPRODEH. CIPRODEH recently developed an additional publication focusing on discrimination, the *Non Discrimination in Police Actions: Protection for the Rights of Homosexuals*, but it is yet to be included in the curriculum.¹ The publication is flawed. It focuses on gay men, leaving aside other identities.

evangelical organization], come to talk to police officers on how to lead a Christian life. They bring the institution to God. I think it is important to bring the community, the church, and the police together. The Catholic Church also comes,” he said.⁴¹ To our knowledge, the police curriculum does not include any specific training on gender identity and expression.

The Shape of Transgender Lives in Honduras

My dad was truly a macho. My every feminine action was reprimanded by beatings—so instead of receiving love, I received beatings. My mom gave me support: but only through her voice, because she lived in the United States. Even though he [my dad] mistreated me, I loved my father. I understood him. To him his last name meant work and respect and in my mind I felt guilty and I asked, ‘God, why did you make me this way’? I did not want to shame my father.

—Fernanda Vallejo, San Pedro Sula, December 18, 2008

We heard accounts similar to Fernanda’s when interviewing transgender people in Tegucigalpa, La Ceiba, and San Pedro Sula. Most interviewees told us they began to feel attracted to men at an early stage of their lives. During puberty many considered themselves gay, but it was not until late adolescence that they dared to cross the boundaries of gender and begin to call themselves *travestis*. Within the LGBT community gay men who appear too effeminate are considered “flamboyant gays.”⁴² All of the interviewees told us they transitioned from *gay obvio* [flamboyant gay] to *travesti*. There is a continuum as well as a conceptual distinction between gay men defined by their sexual orientation on the one hand, and male-to-female transgender people defined by their gender identity and expression on the other.

Machismo in Honduras means that men who do not act like men (or women who are considered somehow not quite women) face hatred and violence for their refusal to conform to normative gender identities. A deep-seated misogyny drives this hatred and enforces gender norms. Religious strictures and legal provisions both reinforce and justify this revulsion and rejection. Discrimination often begins in the family, and many transgender people run away from home to escape repressive parents. City life is rarely easier, though: a cycle of inequalities, economic as well as social, cements them in second-class status.

⁴¹ Human Rights Watch interview, Wilmer Marthel Valle, Police Commissioner, Tegucigalpa, February 23, 2009.

⁴² The description given of a flamboyant gay, in some cultures would be considered a transgender person, thus merging somehow sexual orientation and gender identity.

Nonetheless, transgender people form communities and families of their own, speak out for their freedoms, and fight for their rights.

Discrimination and prejudice based on gender identity and gender expression in Honduras insinuate themselves into transgender people's experiences from an early age. They affect many *travestis'* ability to access basic goods and services, including education.

In 2005, at the age of 18, Deilin was studying in the Jose Trinidad Reyes Institute doing her third year in the basic school cycle. In December 2008 she told us:

I was expelled on the grounds of my sexual orientation [at the time, she says, she already identified as *travesti*]. I then transferred to the Morazan School. During my first year of business administration I came out as trans. They first suspended me for six days, then for 12 days and then indefinitely. I could not graduate. It was through sex work that I managed to complete my basic studies.⁴³

Transgender people also told Human Rights Watch about pervasive difficulties finding jobs. Many prospective employers refuse to hire them because they are dressed like women; others fire them if they find out they violate social norms for dress outside office hours. Many people told us they had managed to keep a job against the odds as a gay man, but lost it when they started to identify as transgender. Lisa, 35 years old, worked for the social security office in San Pedro as an administrative associate. "I always felt the need to be a woman, but I had to quit my job to achieve this. Working where I did, I could not keep my identity. The next day after I quit I dressed like a woman and went out to *talnear* [Spanish slang for going out at night to do sex work].⁴⁴

Yet certain kinds of jobs, particularly low-paying service jobs, offer a marginal niche in which some transgender people can survive. The restrictive scope of these pigeonholes in turn constrains people's sense of their identities. Pía, 18, considers herself a transsexual. Born in La Ceiba, she came out to her parents two years ago, on the day when she began dressing like a woman full-time. Pía graduated in accounting but is now studying to become a hair stylist. "I want to have a beauty salon," she told us.⁴⁵ Asked why she wanted to be a stylist

⁴³ Human Rights Watch interview, Deilin, San Pedro Sula, December 4, 2008. Deilin's use of "sexual orientation" shows once again the continuum between the terms sexual orientation and gender identity.

⁴⁴ Human Rights Watch interview, Laura, San Pedro Sula, December 8, 2008.

⁴⁵ Human Rights Watch interview, Pía Johnson, La Ceiba, December 10, 2008.

and not an accountant, she replied, “Accounting is not a career that lets me be myself. Beauty work does. If they see me like this in a bank they will make my life impossible, but not in a beauty salon,” she explained.⁴⁶ Sasha, dedicated to housework and in a relationship with a taxi driver, with whom she says would be “married” but for the lack of legal recognition, agrees with Pía. She also maintains that the state is the first to discriminate: “You can work in a beauty salon, as interior designers, as a tailor, a cook or a house wife, but ask for a state job and it will be impossible to get it. They generalize and see us as vulgar people or sex workers. There is no work for us.”⁴⁷

For some transgender people, sex work offers more income, independence, and possibilities than other work; for others, it is the sole recourse when no other paid employment is possible. Nicole, 28 years old, travels to San Pedro Sula from her home in another city to do sex work. At home she dresses like a man, as a sign of respect towards her aunt. “I have been doing sex work for 10 years. I cannot get a job here for the way I am so I have to get money from my body and what I am.”⁴⁸

Some transgender people we spoke to say they chose to do sex work because the narrow possibilities available in a heavily gendered economy limited their options. Others started to engage in sex work as a means to keep up their studies or to save for the future. Still others simply felt the streets were the only place where they could be themselves.⁴⁹ In December 2008, Cynthia Nicole, a leading transgender rights activist subsequently murdered, told us:

We have the right to work, that right is violated ... We have to work on the streets. We have the right to education ... We are kicked out of schools. We are left with one possibility, using our beauty [literally “bellas virtudes”], to survive in this discriminatory country.⁵⁰

⁴⁶ Ibid.

⁴⁷ Human Rights Watch interview, Sasha, La Ceiba, December 10, 2008.

⁴⁸ Human Rights Watch interview, Nicole, San Pedro Sula, December 8, 2008.

⁴⁹ In Tegucigalpa transgender people engage in sex work near CEUTEC University, Hotel Maya, in Barrio Guacerique, and around the Obelisco. The Hotel Maya is in central Tegucigalpa and is considered to be close to the tourist zone. Barrio Guacerique and the Obelisco are in Comayaguela, a small town across the river to the south of Tegucigalpa. In San Pedro Sula they work along Boulevard Morazán, near the center of town, but most are relegated to “El Tamarindo,” a district south of the railway tracks, and other outlying areas, like the store Diunsa.

⁵⁰ Human Rights Watch interview, Cynthia Nicole, Tegucigalpa, December 5, 2008.

III. Police Abuse and Violence

Human Rights Watch documented police actions that violated fundamental human rights protections against torture and cruel, inhuman, and degrading treatment or punishment and due process. Transgender people in San Pedro Sula and Tegucigalpa reported serious violence – including sexual and physical assault – as well as extortion of money by members of the Municipal and the National Preventive Police. Transgender people also reported that law enforcement officials failed to undertake diligent and effective investigations and prosecute the perpetrators of these violations.

International law forbids the use of torture and other cruel, inhuman, or degrading treatment or punishment by officials or persons acting in an official capacity.⁵¹ These prohibitions apply "not only to acts that cause physical pain but also to acts that cause mental suffering to the victim,"⁵² including intimidation and other forms of threats.⁵³ International law also guarantees the right to liberty and security of the person and protection from arbitrary detention.⁵⁴

Rape, Assault and Extortion

Human Rights Watch interviews indicate that, despite express prohibitions in international and Honduran law, policemen use their power to demand sex and to extort money from transgender people, often on pain of violence.⁵⁵

⁵¹ American Convention on Human Rights (ACHR) ("Pact of San Jose, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Honduras in May, 1977, article 5. Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force February 28, 1987, signed by Honduras in March 1986, arts. 1, 6. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, A/39/51 (1984), entered into force June 26, 1987, ratified by Honduras in December 1996, arts. 2(1), 11, and 16.

⁵² Human Rights Committee, *General Comment 20*, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.1 at 30 (1994). The Human Rights Committee is the United Nations body charged with monitoring implementation of the ICCPR. See also Convention against Torture, article 1 (defining torture to include intentional acts that cause severe physical pain or mental suffering).

⁵³ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. General Assembly, A/56/156, July 3, 2001, Section IIA (finding that fear of physical torture may constitute mental torture, and that serious and credible threats to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment, or even to torture, especially when the victim is in the hands of law enforcement officials).

⁵⁴ Convention against Torture, article 15. See also Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principle 21

⁵⁵ Article 33 (15) of the National Police Organic Law prohibits "taking advantage of a hierarchy position to induce, abuse or engage in relations of sexual character."

When Human Rights Watch interviewed Patricia in February 2009, she showed us 5 of 17 scars she said she had received from a recent stabbing by a police officer.

On December 18 a policeman forced me into his car to have sex with me. I got into his car and after having oral sex, he told me he wanted me to penetrate him. I explained to him that I couldn't be active [because she was a transsexual] and lifted my skirt. He looked at me and said, 'You would have been better born a woman!' I apologized, but he got really angry. He tried to pull out a gun but I threw myself against him and fought him with one of his crutches [Patricia later told us the man was using crutches because he was injured]. My friend Estefania heard what was happening and screamed for help. A patrol car (MI 106) stopped. The police officers took the guy out of the car and told him to leave. But that was it.

The next day, the man with the crutches drove again by CEUTEC [a university], the place where we do sex work. He came close to me and rolled down the window. I was scared so I said 'hi.' He asked me to come closer. I did and asked him what he wanted. He stabbed me in the neck.

I couldn't run—I felt I was fainting. I saw two other people come out of the car. They pushed me in the back seat and took off. I saw that we were on the road towards Danli [a town south of Tegucigalpa] so I started to fight back when I felt my strength coming back. He [the main assailant] stopped, turned around and started to stab me more. I fainted. They threw me out of the car and left me for dead.

A taxi that was coming the other way picked me up and took me to the Clipper [a medical center] in El Hato [a neighborhood] and from there an ambulance took me to Escuela Hospital. Doctors in the hospital said if I had arrived 5 minutes later, I would have died. They had to put a tube through my lungs because they were full of blood from the first stabbing.⁵⁶

⁵⁶ Human Rights Watch interview, Patricia, Tegucigalpa, February 18, 2009.

The man Patricia identified as her attacker, Amado Rodríguez Borjas, is a member of the police force. “A person like him should not be in a position like that; he should not be a policeman,” she concluded.⁵⁷

Diana, 23, told a similar story. “About eight months ago [May 2008] three police officers stopped me on the street and forced me into a patrol car. They drove me to a faraway place that I did not recognize. The officers tore my clothes off; all three beat me and raped me. Then they left me in the outskirts of the city.”⁵⁸

Most commonly, transgender women told stories of police forcing them to engage in oral sex. Natalia, 19, recalls a night when a police officer forced her into a police car and took her near the stadium. “When we got to the stadium the policeman held a gun against my head and made me suck him. It was horrible, but thankfully he only beat me and let me go after stealing my money.”⁵⁹

In 2008, Paola, 18, told Human Rights Watch that police demanded sex from her several times a month. She told us of a police assault that very week:

It was last Tuesday. I was working in the Maya [a sex work area near Hotel Maya]. Around 10:00 p.m. four police officers told me to get in the patrol car. They started to beat me and asked me to have sex with them. They wanted me to give them all an oral. I refused. They drove me to the road that exits the city in the south and they beat me senseless and threw me there and left. They were wearing police uniforms. I have seen them before but I don't know their names because they concealed their badges.⁶⁰

All the interviewees told Human Rights Watch spoke to had at least one story of police extorting money—from themselves, their clients, or both. Lisa, 35, who told Human Rights Watch police asked her for sex on average every couple of weeks, also recounted an example of police extorting money from her client:⁶¹

⁵⁷ Ibid.

⁵⁸ Human Rights Watch interview, Diana, San Pedro Sula, December 11, 2008.

⁵⁹ Human Rights Watch interview, Natalia, San Pedro Sula, December 11, 2008.

⁶⁰ Human Rights Watch interview, Paola, Tegucigalpa, December 5, 2008.

⁶¹ Human Rights Watch interview, Lisa, San Pedro Sula, December 18, 2008. “A few days before that, [November 2008] members of the national preventive police found me with a client in a vacant lot. They started to beat me up and wanted to take me in the patrol car. They told me that I should have oral sex with them, to be let go. There were six of them, so I had to say yes and gave them all oral sex.”

Almost every day [police demand money]. The last time was last Thursday. I got in the car with a client who gave me 500HNL [US\$26] up front. Around the block, police stopped me and made me get out of the car. They blackmailed the client and took his money.⁶²

Melbin told Human Rights Watch about the last time municipal police extorted money from her:

Three weeks ago [early December 2008] three police officers from the municipal police stopped me in the street while I was negotiating with a client. The police threatened to arrest me if I did not give them something. What they wanted was money. So I gave them 200 HNL [US\$11] and they left me alone.⁶³

Montserrat confirmed this and added,

It's a routine. It's always the same thing. We get in a car and they [the police] follow the car. A few streets later they stop the car. Police steal our money and then threaten the client. They tell him they will tell the TV stations that they found him with a trans. Sometimes they arrest us, sometimes they extort money from us. They [the police] leave us without money and without a client.⁶⁴

Yet police authorities routinely deny any wrongdoing. Commissioner Castillo of the National Preventive Police in San Pedro Sula told Human Rights Watch that his officers could not extort money from or attack transgender people because they do not have jurisdiction in the places where transgender people do sex work.⁶⁵ Abel Guerrero, head of the Municipal Police in San Pedro Sula, told Human Rights Watch, "I will give you my resignation right now if you tell me of any municipal policeman that has extorted money from them [transgender people]."

⁶² Ibid.

⁶³ Human Rights Watch interview, Melbin, San Pedro Sula, December 18, 2008.

⁶⁴ Human Rights Watch interview, Montserrat, San Pedro Sula, December 18, 2008.

⁶⁵ Human Rights Watch interview, Commissioner Castillo, First Police Station, San Pedro Sula, February 19, 2009.

Beatings

Joshua is a 19-year-old who identifies as *travesti*.⁶⁶ Joshua is not allowed to be herself at home—to wear high heels and a skirt—so she changes elsewhere before going out at night. Joshua does not feel safe at home, but she is not safe on the streets either. She recalls a night that left her immobilized for weeks:

Four months ago [in September 2008], police attacked us near CEUTEC University [in Tegucigalpa]. It was around 2 a.m. and we were working. Suddenly five police cars and around 20 policemen appeared from nowhere. We were eight transgender people doing sex work.

They screamed at us and said they were taking us away. We showed them our identity cards and yet despite this they took us. Before taking us, a couple of them did say we could “solve things a different way.” We told them we did not have any money because we hadn’t worked yet and that they could take us if they wanted to. Two policemen grabbed me and put me in a car and punched me in the face.

They took us to the [Manchen] police station and shoved us into the cells. ... From the moment they pulled us out of the car at the station till they got us inside, they hit us and dragged us all. When we got there and while they put our names in a book, they pushed us to the floor, and hit our faces and hit us with batons. They also tried to push us down the stairs. They called us *culeros*.

On the way to the cell one of them [police officers] broke a broomstick against my back. That guy was not even working. He was in the police station resting and came down when we arrived. He hit me and roughed up several of my friends. There were two lockups. We were put in the women’s one. We were kept all together until they took me to the hospital two hours later.

At Escuela Hospital they put my back in a cast. I was kept there two days for checkups. I did not see the police again.

⁶⁶ Human Rights Watch interview, Joshua, Tegucigalpa, December 5, 2008.

Police never told these eight detainees the reason for their arrest, nor were they allowed to make a phone call. The transgender people explained to the officers that they were doing nothing illegal: it made no difference.

On December 1, 2008, Mónica, 18, stood with a group of friends behind Diunsa [a store that is also a sex work area], in the city of San Pedro Sula. At around 8:00 p.m. a police patrol car stopped, carrying five members of the Municipal Police. “They started beating us with their batons. I ran away into the Motel El Sauce, but the police continued to beat my friends. They told us to leave the area because this was not an area for *taloneo*.”⁶⁷

Police physically assaulted an outreach worker with the National Association of People Living with HIV/AIDS (ASONAPSIDA), in December 2008.

I was standing in Vatican Street, in front of CEUTEC [University] in Colonia Palmira [a neighborhood]. Minutes later a police patrol car (M179) assigned to the Manchén police station arrived. They asked for money. I told them I did not have any money. So they grabbed me by the hair and hit my head against the glass door of the corner building. They hit me until they broke the glass with my face. They then accused me of trying to break into the building to steal, and they took me away.

When I arrived at the Manchén Police Station I begged the police officer in charge to let me make a phone call. He just ignored me. A couple of hours later they finally took me to the Clipper [an emergency medical facility] in the October 21st neighborhood. In the police car they threatened me and told me I would die if I said anything.

At the Clipper, while the police were outside, a nurse let me use her cell phone. I managed to call a friend who reached Indyra Mendoza, the coordinator of the Red Lésbica Cattrachas [an organization based in Tegucigalpa that advocates for the rights of the LGBT community in Honduras]. When we returned to the police station one of the police officers said I was there for “public scandal,” under the Law on Police and Social Affairs. I was detained until 11:30 a.m.⁶⁸

⁶⁷ Human Rights Watch interview, Mónica, San Pedro Sula, December 8, 2008.

⁶⁸ Human Rights Watch interview, name withheld, Tegucigalpa, February 18, 2009. Office of the Attorney General, Human Rights Unit, Case No. 485-08 (on file with Human Rights Watch).

Arbitrary Arrests

Depriving individuals of their liberty if they have not been convicted of a crime, including the pre-trial detention of suspects, should only be the exception, never the norm, and should take place under regulated and defined circumstances.⁶⁹ However, the open-ended clauses in the Law on Police and Social Affairs actively encourage the arbitrary arrest and detention of transgender people appearing in public.

The interpretation of what the law means by “moral” is left to the police. Policemen in Tegucigalpa had different views on what “morality” means. Orlando Ruíz, head of the Manchén Police Station, said, “Morality is what the Honduras society mandates. For instance, people cannot wear clothes that are too sexy when going into an establishment.”⁷⁰ Colonel Galo told Human Rights Watch, “Immorality is when you can see everything”—when clothes are too revealing. He added, it is important *what kind* of body the clothes reveal: “You see how Real Street is full of women prostitutes⁷¹ and the police do not arrest them and charge them—because they are not dressing immorally.”⁷²

A high-ranking officer displayed prejudices that presumably filter down to patrolmen on the street, telling us that “[w]hat happens with those homosexuals [referring to transgender people] is that they are robbers and the men they go out with do not want to charge them because they are ashamed. Most of those homosexuals are robbers, vulgar and ill-mannered. They do not respect the police. I cannot stand those people in the area.”⁷³

Other police officials do not deny that homophobia is rife among the police force. At the *First National Transgender Congress* organized by UNAIDS and several nongovernmental organizations in December 2008, General Police Commissioner Mirna Suazo said, “in our country, which is a patriarchal society, police tend to reproduce the roles and stereotypes that the society and culture has imposed.”⁷⁴ Other police officers also talked about

⁶⁹ ICCPR, article 5(3).

⁷⁰ Human Rights Watch interview, Orlando Ruiz, Tegucigalpa, February 23, 2009.

⁷¹ The colonel used the archaic word *meretriz* in Spanish, derived from *meretrix*, a Latin word for prostitute.

⁷² Human Rights Watch interview, Obin Alexis Galo Maldonado, Police Commissioner, Tegucigalpa, February 23, 2009.

⁷³ Human Rights Watch interview, Vásquez Palma, Sub Commissioner Manchén Police Station, Tegucigalpa, February, 23, 2009.

⁷⁴ General Police Commissioner Mirna Suazo, oral presentation at the First National Congress of Trans People on Human Rights and Universal Access, December 5, 2008.

machismo and homophobia as a problem in the police force.⁷⁵ The Chief of the Metropolitan Police in Tegucigalpa said, “It’s hard to discuss this [referring to LGBT issues] with officers in lower ranks, because if one talks about it they assume it’s because, perhaps, one is like them [that is, one is lesbian, gay, bisexual, or transgender].”⁷⁶

Acknowledging police violence and discrimination against members of the LGBT community, including transgender people, is a precondition to ending it. Yet these unusual admissions have not been followed up with any change to broad provisions of the Law on Police and Social Affairs that invite abuse, or by any prosecutions of officers who have allegedly engaged in abusive behavior.

Arrests Based on Prejudice

Dita is a 49-year-old *travesti*. She told us she has known she was transgender since she turned 18. Today Dita makes a living cleaning, ironing, and teaching handicrafts. “I find ways to survive,” she says. “For Valentines Day I will come up with a card with a thought and I will sell these things to earn some money.” Dita studied to be an accountant and has never been a sex worker, yet police routinely stop her in Tegucigalpa, assuming she is one because of her gender identity and expression.

Police stop me. They just say, ‘you are from the Maya’ [a sex work area near Hotel Maya in Tegucigalpa] and they hit me and shove me into the police car. They take me to the police station. They disregard my explanations that I am not a sex worker and they just tell me, ‘In with you for 24 hours!’ This happened last three weeks ago [February 15, 2008]. I was coming from having a beer and I stopped a taxi. I got in and just as we were going around the park a police officer stopped us. The policeman screamed and called for backup saying that the taxi driver was my client and I was trying to steal from him! He took me to the Manchén police station and left me there for 24 hours.⁷⁷

Police tag human rights defenders with the stigma of sex work as well.

⁷⁵ Human Rights Watch interview, Alexis Galo Maldonado, Police Commissioner; Wilmer Marthel, Police Sub commissioner, Tegucigalpa, February, 23, 2009.

⁷⁶ Human Rights Watch interview, Ambrosio Ordoñez, Chief of Metropolitan Police in Tegucigalpa, Tegucigalpa, February 23, 2009.

⁷⁷ Human Rights Watch interview, Dita, Tegucigalpa, February 21, 2009.

On May 26, 2007, police stopped Claudia Spellmant, leader of the Collective TTT and member of the RedLac Trans (a regional network that works for the protection of transgender people's rights), as she walked near the municipal stadium on her way to a concert. The officers accused her of doing sex work, ignored her explanations, and pushed her into a police patrol car. They took her and another group of transgender women arrested separately in the same area to the municipal police station.⁷⁸ The officers told the detainees they had disobeyed instructions to avoid public places reserved for "normal and decent people."⁷⁹ They were not charged. While there are no laws or regulations that specify the "permitted" places to do sex work, police use the broad language of the Law on Police and Social Affairs to unlawfully target and detain transgender people.

When researchers asked police authorities about these arrests, Abel Gamero, director of the Municipal Police in San Pedro Sula said, "The city has its own governance. There are places where they can [do sex work] and others where they can't."⁸⁰ When asked if this was written in laws or regulations, he said, "No, these are spoken directives in place because the community asks for them."⁸¹ Gamero remained silent when Human Rights Watch asked how policemen knew a transgender person was engaging in sex work.

Alejandra, who works in San Pedro Sula with Comunidad Gay Sampedrana, had an experience similar to that of Spellmant.

About a year ago [February 2008] I was walking on First Street. I was going to the movies by myself—looking very feminine, with my handbag, makeup, everything. Four policemen in blue uniforms stopped me. They told me I was a commercial sex worker. I told them I was not that, I was only going to the movies. Regardless, they put me in the police car and took me away. I told them to let me go, that I had to go to work later in the day. I showed them my identity card and they still said that they were taking me to the station unless I paid them to let me go. I was scared so I gave them 500HNL [US\$26].⁸²

⁷⁸ Human Rights Watch interview, Claudia Spellmant, San Pedro Sula, February 18, 2009.

⁷⁹ Ibid., see IGLHRC, "Honduras: New Arbitrary Detentions. This Time Victims are Travesti People," July 12, 2007, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/globalactionalerts/439.html>. Claudia initiated a claim before the Office of the Attorney General, Case No. 0501-2007-05367, October 9, 2007, in file with Human Rights Watch.

⁸⁰ Human Rights Watch interview, Abel Gamero, San Pedro Sula, February 18, 2009.

⁸¹ Ibid.

⁸² Human Rights Watch interview, Alejandra, San Pedro Sula, February, 19, 2009.

Police prejudice against transgender people may hamper and interfere in some cases with HIV prevention work. Chichi, a 32-year-old transgender person, was born in Tegucigalpa and lives there now; she used to work with Colectivo Violeta on HIV/AIDS prevention for sex workers. In early 2007 police detained her while she was doing outreach work.

That night when we went out to distribute condoms and information to transgender people doing sex work, the police stopped us and registered us [asking for their identity cards and body-searching them]. Just because they saw my *blumer* [thong], they assumed I was doing sex work and took me to the police station. I had to stay there until the next day.⁸³

⁸³ Human Rights Watch interview, Chichi, Tegucigalpa, December, 5, 2008.

IV. Failures to Protect and Investigate

Honduran authorities have the obligation under international law to prevent abusive behavior by police and other officials, and to investigate, prosecute, and provide effective remedies when violations occur.⁸⁴

The Inter-American Court of Human Rights has held that “the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations and the total defenselessness of victims and their relatives.”⁸⁵ It is only by investigating, prosecuting, and providing effective remedies that impunity can be fought.

Officers in Honduras who vigorously enforce provisions of the Law on Police and Social Affairs that involve vague invocations of morals are much less stringent in applying laws that place obligations on themselves.⁸⁶ Police regularly fail in providing protection to transgender people.

Failure to investigate crimes is common in Honduras. According to Amnesty International, the government has yet to resolve the disappearance of 184 people during the 1980s.⁸⁷ According to human rights organizations such as the Committee for the Defense of Human Rights (Comité para la Defensa de los Derechos Humanos en Honduras, CODEH), violations of the rights of certain groups, including young people, women, and people with various vulnerabilities, are less likely to be investigated than violations of the rights of others.⁸⁸ Our interviews suggest that the cases of transgender people are almost never investigated.

⁸⁴ ICCPR, art. 2(3)(a); American Convention on Human Rights (ACHR), arts. 1, 10, and 25. Similarly, the Inter-American Convention to Prevent and Punish Torture requires states to “take effective measures to prevent and punish torture” and “other cruel, inhuman, or degrading treatment or punishment within their jurisdiction” (Article 6). See Human Rights Committee, “General Comment 31,” CCPR/C/21/Rev.1/Add.13, para. 8. Also see the jurisprudence of the Inter American Court on Human Rights (IACtHR) in *Villagrán Morales v Guatemala* (Series 63, Judgment: 1999) para. 139; *Godínez Cruz v Honduras* (Series 5, Judgment: 1989) para.185 and the jurisprudence of the European Court in *X and Y v The Netherlands*, App. 8978/80, para. 32; *Osman v United Kingdom*, App. 87/1997, para. 107.

⁸⁵ IACtHR, *Paniagua Morales et al. v Guatemala*, (Ser. C) No. 37 (1998), March 8, 1998, para. 173.

⁸⁶ Article 41 of the law states that “[p]olice are obliged to provide, without delay, support to every person in urgent need of assistance to protect their life and honor, property, home inviolability, personal liberty and tranquility.” Article 39(2) includes the obligation on police to “prevent the imminent or actual commission of a crime or police infraction.”

⁸⁷ Amnesty International, “Zero Tolerance ... on Impunity: Extrajudicial executions of children and young people since 1998,” AMR 37/001/2003/s, February 23, 2003, <http://www.amnesty.org/es/library/asset/AMR37/001/2003/es/179e66d4-d752-11dd-b024-21932cd2170d/amr370012003es.pdf> (accessed April 20, 2009).

⁸⁸ See Comité para la Defensa de los Derechos Humanos (CODEH), “Crime, Delinquency, and Impunity, Report 2008,” <http://www.codeh.hn/investigacion.html> (accessed April 30, 2009).

Prejudices within law enforcement agencies may lead to bias in police investigations of crimes against transgender people.⁸⁹ Investigative independence may also be at risk when the perpetrators are members of the police force.⁹⁰

Interviewees routinely told Human Rights Watch that their claims are not investigated. Police failure to respond undermines access to justice, because people lose the last shreds of confidence in the system. Some do not even bother to file complaints any longer.

Failure to Investigate: Losing Faith in the System

Cynthia, 21 years old, told Human Rights Watch that she “dresses and feels like a woman” day and night. She recounted how a police officer, member of the national preventive force, attacked her in September 2007.

I was on the street and a car stopped next to me at around 10:00 p.m. The man in the car asked how much I charged. I told him that I could get in and we could negotiate the price while going around the block. We drove off and I told him I charged 500HNL [US\$26]. He said, ok, start with oral sex. But I told him he had to pay me up front, like everyone else. He did not like this and got really angry. We started to fight and he took out his gun and said, “Then I’m going to kill you!” We fought and the gun discharged. Saying ‘Since I didn’t get you...’ he hit me then with the back of the gun on the head. I don’t know how, but I manage to throw myself out of the car. I tried to fix myself up. I walked to my apartment and then took a taxi to Escuela Hospital.

I remember it was a Monday because the day before my friend Juliana was attacked by the same man. I still remember the guy. I still see him around but I hide from him. He is a policeman. That night in the car he showed me his badge and said ‘I’m a policeman, they cannot do anything to me—and you’re not worth a penny, anyway.’⁹¹

⁸⁹ See CAT, Articles 11 and 12; American Convention to Prevent and Punish Torture, Article 8; Commission on Human Rights, Report of the Special Rapporteur Nigel Rodley, submitted pursuant to resolution 2000/43, E/CN.4/2001/66, January 25, 2001 (accessed April 30, 2009), para. 1310, for the requirement of impartiality in any investigation.

⁹⁰ See IACHR “Report on the Situation of Human Rights in Mexico”, September 24, 1998, OEA/Ser.L/V/II.100, par. 3233, on how the lack of independence negatively impacts impartiality. This is confirmed in *Marritza Urrutia v Guatemala*, par. 119.

⁹¹ Human Rights Watch interview, Cynthia, Tegucigalpa, February 18, 2009.

Cynthia went to the Prosecutor's Office in Tegucigalpa to initiate a claim against her attacker, and provided her testimony. Two years later, she still has not heard back from the office despite repeated enquiries.⁹² Human Rights Watch has on file the documentation of other 10 other claims presented before the National Bureau for Criminal Investigation (DGIC) and the Ombudsman's Office by transgender people in 2008, of which only one has an assigned prosecutor.⁹³

In early 2004, the LGBT organization Comunidad Gay Sampedrana in San Pedro Sula sent a letter to the Office of the Attorney General asking for information on the status of investigations into over 200 crimes against LGBT individuals.⁹⁴ The Human Rights Unit of the Office of the Attorney General referred the letter to the Common Crime Unit of the Attorney General on September 17, 2004. Comunidad Gay Sampedrana never got a response.⁹⁵ Similarly, Red Lésbica Cattrachas, a group based in Tegucigalpa, asked on May 31, 2008, for a meeting with Minister of Security Jorge Alberto Rodas to discuss violence against transgender people and the lack of investigations by police. It never received a response.⁹⁶

LGBT activists recognize that there is a general sluggishness on the part of state agencies to respond to citizen's communications, yet in cases concerning the LGBT community there is no response at all. The unresponsiveness to communications sent by these organizations suggests a lack of will by the state of Honduras to broach the subject of the violence faced by LGBT communities. When asked why so few claims filed by LGBT people result in prosecutions, lawyer Grisel Amaya, a member of the Office of the Attorney General in charge of the Women's Unit, responded, "The problem within the judiciary is that if a man comes in dressed as a women, this person is not taken seriously."⁹⁷

Cynthia Nicole, a prominent human rights/transgender rights defender, 32 years old when we spoke to her, agreed with Amaya. She said,

⁹² Ibid., Office of the Attorney General, Center for Reception of Claims, Case No. 0801-2008-36722 (on file with Human Rights Watch). Human Rights Watch asked prosecutors about this case, but it was not in their files.

⁹³ See above, fn 63.

⁹⁴ Office of the Attorney General, Memorandum No. FEESJ-039-4, September 17, 2004 (on file with Human Rights Watch).

⁹⁵ Human Rights Watch interview, Carlos, February 18, 2009.

⁹⁶ The Ministry acknowledged receipt of the letter on June, 3, 2008.

⁹⁷ Human Rights Watch interview, Grisel Amaya, Tegucigalpa, December 2, 2008.

I have filed reports many times. None of the claims have had a response. Here in Honduras it seems that cases mount, and authorities follow up only on cases with the strong backing of people high up. The cases from minorities like us are not taken into account. They put them away and archive them. I have never seen someone go to prison [for such a case]. Police are friendly to me, but when we talk about resolving cases, well, they don't. Our human rights abuses are not a priority for them.⁹⁸

Unknown assailants killed Cynthia Nicole a few weeks later on January 9, 2009.⁹⁹ The process is in the first phase of investigation by the new National Bureau for Criminal Investigation (DNIC); no suspects have been caught. A member of the DNIC told us that an internal obstacle in the investigation of this and other crimes against transgender people is “the number of homophobes in it [the DNIC].”¹⁰⁰

The fact that Cynthia Nicole's murder is even being investigated, according to Sandra Ponce, is “above average for violence against transgender people.”¹⁰¹ This is consistent with our findings: none of the other victims we spoke to were aware of active investigations into their cases, including those who initiated cases with the prosecutor's office.

Failure to Protect: Police Inaction

Unknown men attacked Diana, a 23-year-old *trans girl*, as she calls herself, a few days before we interviewed her in 2008. Policemen stood by and watched.

Last Tuesday, [December 9] I was standing behind Diunsa [a store outside the center of San Pedro Sula where transgender people do sex work] at around 10:00 p.m. The policemen were half a block away from me. I was standing on the street when a bus passed by. A group of men got off the bus and started to throw rocks at me. I started to run. One of the guys followed me with a gun, took my purse, and ran away. The police were standing near Hotel El Sauce. I started to scream asking for their help, but they just stood there! I didn't file a complaint because I have done so before and it leads

⁹⁸ Human Rights Watch interview, Cynthia Nicole, Tegucigalpa, December 5, 2008.

⁹⁹ According to testimonies by other rights activists, three unknown men in a blue car shot Cynthia Nicole in a drive-by shooting in Barrio Guacerique in Comayagua, a town just outside Tegucigalpa. She received three shots in the chest and one in the head. Human Rights Watch interview, Indyra Mendoza, Tegucigalpa, February 16, 2009.

¹⁰⁰ Human Rights interview, name withheld, Tegucigalpa, February 17, 2009.

¹⁰¹ Human Rights Watch interview, Sandra Ponce, Tegucigalpa, February 16, 2009.

nowhere. Another time, around three years ago, I got to the police station full of blood and they did not even listen to me. So what is the point?¹⁰²

Diana is not alone in her doubts about of the police’s willingness to protect her or punish those who attack her. Bibi, now 23, started working as a sex worker at 16. She told us she is used to abuse and violence, and to lack of response from the police. The latest incident of brutality in November 2008, helps explain why.

I work near the Maya Hotel. That night a white car stopped next to me. I talked to the guy and got in the car. As we drove off, the guy was nice to me, but then he got aggressive. He grabbed me by the hair and since I had a few drinks I couldn’t react. He started to get really violent. At some point he stopped the car and I tried to climb out. I got the door open as he got out for a second, but he then climbed back in again with a gun in his hand. He held me by the hair. He was really angry and really violent. Then I heard a shot! I fell on the sidewalk and I saw him drive away. My leg started to shudder and the more I moved, the more blood came out. I started to scream for help. A police car stopped by, they looked at me, and left.¹⁰³

Cynthia, her friend and also a transgender sex worker, saw the shooting:

I saw a guy in a white car with shaded windows talking to Bibi. At that moment I got in another car with a client. Minutes later I heard a shot. I immediately got out of the car. When I went back I saw Bibi on the ground I heard her screaming and rushed to get the police. I went to the nearest police station [a women’s police station], but they didn’t do anything.¹⁰⁴

We asked Bibi why she thought the police did not stop. “I don’t know why,” she said. “Indifference to someone like me, I guess.” Bibi was relieved that the man only shot her once. She spent 16 days in Escuela Hospital, had surgery, and a cast put on her leg. Bibi decided it would be useless to file a claim against her attacker—or against the police officers who refused to assist her.

¹⁰² Human Rights Watch interview, Diana, San Pedro Sula, December 11, 2008.

¹⁰³ Human Rights Watch interview, Bibi, Tegucigalpa, February 8, 2009.

¹⁰⁴ Human Rights Watch interview, Cynthia, Tegucigalpa, February 8, 2009.

Similarly, Mónica, 18, was still shaken up by the latest attack behind Diunsa, where she usually works.

A client almost killed me. He wanted sex without a condom and I told him [I wouldn't do it] without a condom. He took out a gun and put it against my head. So what I did was to give him the condom and I told him to read it to show him the risks for him and for me. In the meantime I took my shoes off and when I got the chance I opened the door and ran away. He shot at me but didn't get me. I recall we were in a dark place far away from the city. It was a real trauma that time. I was so scared I did not go out for two months because of the trauma.¹⁰⁵

When we asked her whether she had gone to the police, she said she felt it would be pointless. She mentioned the names of five other friends who had filed complaints that had had no outcome.

¹⁰⁵ Human Rights Watch interview, Mónica, San Pedro Sula, December 11, 2008.

V. Specific Recommendations

To the Government of Honduras

On Law Enforcement

- Revise the Law on Police and Social Affairs to eliminate ill-defined references to “morality” as well as other vague language that can be used to justify the discriminatory targeting of transgender people. Law enforcement officials should not use the Law on Police and Social Affairs as a justification to arrest transgender people who do legally permitted sex work.
- Publicly condemn ill-treatment of transgender people by police and other state agents, as well as extortion, unlawful use of force, and other abuses.
- Conduct independent, impartial, and effective investigations into acts of extortion and unlawful use of force against transgender people by Honduran law enforcement officials. Initiate administrative and criminal investigations against officials found to have engaged in or condoned violence against or extortion of transgender people.
- Issue a written directive from the Ministry of Security to all law enforcement institutions reaffirming that violence, abuse, and discrimination based on gender identity or expression, as well as sexual orientation, will not be tolerated and will be sanctioned.
- Improve the registration of detainees at police stations to avoid ill-treatment of those detained, including by ensuring that transgender people can be registered under either their chosen or their legal names.
- Guarantee that, whenever detained, transgender people are placed in facilities appropriate to their needs, including in police lockups. Cases should be assessed on an individual basis, with criteria developed in consultation with representatives of lesbian, gay, bisexual, and transgender civil society actors, rather than through a blanket policy.
- Ensure respect for and protection of the human rights of detained transgender people, including their right to access to a lawyer, their right to a phone call, and protection against cruel and inhumane treatment and freedom from discrimination and violence.
- Provide regular training to law enforcement officials, in particular to the police, the National Department of Criminal Investigation, and all staff of the Office of the Attorney General, on human rights issues in general and in particular on issues of gender identity, gender expression, and sexual orientation.

- Guarantee due process for transgender people as well as lesbian, gay, and bisexual people, and ensure that their treatment by the police does not discriminate on the basis of sexual orientation or gender identity and expression.
- Establish protocols for the treatment of lesbian, gay, and bisexual people by the police based on international human rights standards.
- Conduct effective and prompt investigations into all reports of violence against transgender people.

On Gender Identity and Expression

- Reform the civil law code and the Law on People's National Registry to institute simple, non-surgically based procedures allowing transgender people to change their identity card legally to reflect their chosen name and lived gender.

On Nondiscrimination and Equality

- Adopt a comprehensive law on non-discrimination based on international human rights standards, including sexual orientation and gender identity and expression, that would enhance and specify the protections of article 321 of the Penal Code, and that would create an independent body to promote non-discrimination and equality and monitor compliance with this law by public and private actors.
- Develop public education programs using the media, public events, and school curricula to address the harmful effects of stereotyped gender roles and the importance of non-discrimination based on gender, gender identity and expression, and sexual orientation.

To the International Donor Community

- Ensure that all development programs that receive financial support address the specific needs and vulnerabilities of transgender and lesbian, gay, and bisexual communities, and promote the protection of people based on gender identity, gender expression, and sexual orientation against police and other abuse.

To the United Nations

- Request that the Panama Regional Office of the Office of the High Commissioner for Human Rights monitor the human rights situation in Honduras, including state and non-state violence and other abuses based on gender identity, gender expression, and sexual orientation.

To Honduran Nongovernmental Organizations (NGOs)

- Co-operate with transgender and lesbian, gay, and bisexual people's organizations in monitoring and mainstreaming LGBT issues to ensure full respect for their human rights.
- Include issues of gender identity, gender expression, and sexual orientation in shadow reports to the United Nations.

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Appendix: Legal Standards

The United Nations System

Legal Precedents Relating to Sexual Orientation and Gender Identity

Various UN bodies, such as the Human Rights Committee and the Special Procedures pay particular attention to issues of gender identity.

The UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment notes that, generally, discrimination against “sexual minorities” affects them when dealing with the police and other authorities and deters them from speaking out against abuses.

[D]iscriminatory attitudes towards members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-State agents. Members of sexual minorities, when arrested for other alleged offences or when lodging a complaint of harassment by third parties, have reportedly been subjected to further victimization by the police, including verbal, physical and sexual assault, including rape. Silencing through shame or the threat by law enforcement officials to publicly disclose the birth sex of the victim or his or her sexual orientation (to family members, among others) may keep a considerable number of victims from reporting abuses.¹⁰⁶

Moreover, the Special Rapporteur has specifically referred to gender identity and harassment of lesbian, gay, bisexual, and transgender people:

The Special Rapporteur has received information according to which members of sexual minorities have been subjected, inter alia, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault. He notes with concern that, according to the information received, the rape of a man or of a male-to-female transsexual woman is often subject

¹⁰⁶ “Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment,” UN General Assembly, E/CN.4/2002/76, December 27, 2001, (accessed April 1, 2009).

to the lesser charge of “sexual assault”, which carries lighter penalties than the more serious crime of rape in a number of countries. It is also reported that male-to-female transsexual women have been beaten intentionally on their breasts and cheek-bones which had been enhanced by silicone implants, causing the implants to burst and as a result releasing toxic substances into their bodies. Ill-treatment against sexual minorities is believed to have also been used, inter alia, in order to make sex workers leave certain areas, in so-called “social cleansing” campaigns, or to discourage sexual minorities from meeting in certain places, including clubs and bars.¹⁰⁷

The Special Rapporteur further notes that members of sexual minorities are a particularly vulnerable group with respect to torture in various contexts and that their status may also affect the consequences of their ill-treatment in terms of their access to complaint procedures or medical treatment in state hospitals, where they may fear further victimization, as well as in terms of legal consequences regarding the legal sanctions flowing from certain abuses. The Special Rapporteur would like to stress that, because of their economic and educational situation, allegedly often exacerbated or caused by discriminatory laws and attitudes, members of sexual minorities are deprived of the means to claim and ensure the enforcement of their rights, including their rights to legal representation and to obtain legal remedies, such as compensation.

...

Finally, the Special Rapporteur notes and shares the views of the Special Representative of the Secretary-General on human rights defenders regarding “greater risks ... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be (...) human rights groups and those who are active on issues of sexuality, especially sexual orientation (...). These groups

¹⁰⁷ “Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment,” UN General Assembly, A/56/156, July 3, 2001, (accessed April 1, 2009).

are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but other social actors.”¹⁰⁸

The Special Rapporteur also recognizes that a considerable proportion of the incidents of torture carried out against members of the LGBT community reflect bias: such individuals often are subjected to violence of a sexual nature, such as rape or sexual assault, in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles.¹⁰⁹

The International Covenant on Civil and Political Rights (ICCPR), which Honduras has signed and ratified, affirms the equality of all people in articles 2 and 26. In the 1994 case of *Nicholas Toonen v Australia*, the UN Human Rights Committee, which monitors compliance with and adjudicates violations under the ICCPR, heard a complaint concerning a “sodomy law” punishing consensual, adult homosexual conduct in the Australian state of Tasmania. The Committee held that “sexual orientation” was a status protected under the ICCPR from discrimination, finding that “the reference to ‘sex’ in articles 2, paras. 1, and 26 is to be taken as including sexual orientation.”¹¹⁰

The continuum that exists between issues of sexual orientation and gender identity, discussed earlier in this report, has also been noted and touched upon by several UN bodies.¹¹¹ Thus, issues concerning gender identity are beginning to be addressed as part of the larger prohibition on discrimination.

For instance, the UN’s independent expert on minority issues recognizes that “some individuals within ethnic, religious, linguistic or national minority groups may experience multiple forms of discrimination because of other factors including gender, gender expression, gender identity, sexual orientation, disability, age or health status.”¹¹² The

¹⁰⁸ “Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment,” UN General Assembly, A/56/156, July 3, 2001 (accessed April 1, 2009).

¹⁰⁹ “Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment,” E/CN.4/2004/56, December 23, 2003 (accessed April 1, 2009).

¹¹⁰ *Nicholas Toonen v Australia*, 50th Sess., Communication No. 488/1992, CCPR/c/50/D/488/1992, April 14, 1994, para 8.7.

¹¹¹ See Shannon Minter, “Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion in the Gay Rights Movement,” 17 N.Y.L. SCH. J. HUM. RTS. 589, 592 (2000).

¹¹² “Report of the Independent Expert on Minority Issues,” E/CN.4/2006/74, January 6, 2006, para. 28.

independent expert thus stated that she would highlight “the importance of protecting diverse forms of personal expression.”¹¹³

The Human Rights Committee has also urged states to pass anti-discrimination legislation that expressly includes sexual orientation and to include in their constitutions the prohibition of discrimination based on sexual orientation and gender identity.¹¹⁴ It has criticized states’ failure to protect people from sexual-orientation-based violence, saying in the case of transgender people assaulted in El Salvador that

The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local “contravention orders”) used to discriminate against people on account of their sexual orientation (art. 26).¹¹⁵

In his visit to Guatemala, the UN Rapporteur on extrajudicial, summary or arbitrary executions found a criminal justice system that was unable to investigate murders of sexual minorities and others. He stated that the “State bears responsibility under human rights law for the many who have been murdered by private individuals.”¹¹⁶ Similarly, Honduras is a state with high levels of murders against LGBT people and others, and low levels of investigation. The Special Rapporteur recognized that “Guatemala is not a failed state and is not an especially poor State.”¹¹⁷ Neither is Honduras and, like Guatemala, Honduras bears international responsibility for a police and a judicial system that fails particular groups of people.

The UN mechanisms have also addressed the right to freedom of expression for human rights organizations working on defending the human rights of lesbian gays, bisexual, and transgender people considering “that all citizens, regardless of, inter alia, their sexual

¹¹³ Ibid.

¹¹⁴ Human Rights Committee, “Concluding Observations: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28; “Concluding Observations: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22; Concluding Observations: Trinidad and Tobago, CCPR/CO/70/TTO, November 3, 2000, para. 11; Concluding Observations: Poland,” 66th Session, CCPR/C/79/Add.110, para. 23.

¹¹⁵ Human Rights Committee, “Concluding Observations: El Salvador,” CCPR/CO/78/SLV, July 22, 2003, para. 16.

¹¹⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Guatemala, A/HRC/4/20/Add.2, February 19, 2007 (accessed April 20, 2009).

¹¹⁷ Ibid.

orientation, have the right to express themselves, and to seek, receive and impart information.”¹¹⁸

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states that acknowledging systemic and entrenched discrimination is an essential step in implementing guarantees of non-discrimination and equality and changing such roles. An aim of CEDAW is to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."¹¹⁹

The Inter American System

Protections for Sexual Orientation and Gender Identity

The American Convention on Human Rights (American Convention) includes provisions on the right to privacy and equal protection that have been interpreted to cover sexual orientation and gender identity.¹²⁰ Similar provisions on equality and privacy have been so interpreted by other regional and domestic jurisdictions.¹²¹

The principles of equality and non-discrimination are deeply rooted in the American Convention and protected by it. Equality is understood as encompassing not only as equal treatment, but also policies tailored to address the specific needs of particular groups in certain circumstances.¹²² For instance, the Inter American Commission on Human Rights (IACHR) has stated the importance of developing affirmative action programs or granting preferential treatment through the law in order to protect specific groups.¹²³

¹¹⁸ Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Mission to Colombia, E/CN.4/2005/64/Add.3, November 26, 2004 (accessed March 15, 2009), para. 75.

¹¹⁹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, A/34/46, entered into force September 3, 1981, art. 12(2), Article 5.

¹²⁰ American Convention on Human Rights, OAS Treaty Series No. 36, 1144 U.N.T.S. 123, November 22, 1969,

¹²¹ See European Convention on Human Rights, article 8 (Right to respect for private and family life); article 14 (Prohibition of Discrimination).

¹²² Inter American Court on Human Rights, *Moiwana Community v Suriname*, Concurring Opinion of Judge Trindade Cançado, June 15, 2005, <http://www.corteidh.or.cr>, (accessed April 21, 2009), para. 11.

¹²³ Advisory Opinion OC-18/03, “Juridical Condition and Rights of the Undocumented Migrants,” September 17, 2003, <http://www.corteidh.or.cr/opiniones.cfm> (accessed April 21, 2009), paras. 103-106.

The IACHR has also emphasized the role of judicial systems in protecting and ensuring the rights to equality and non-discrimination. It has stressed that judicial systems should provide people with effective investigations of violations to their rights in order to maintain the trust of the people in the government institutions.¹²⁴

The IACHR has addressed sexual orientation and gender identity in two cases. *Marta Lucía Álvarez Giraldo v Colombia* concerned the refusal of Colombian prison authorities to allow a woman to have an intimate visit with her imprisoned partner. Colombia argued before the IACHR that “allowing homosexuals to receive intimate visits would affect the internal disciplinary regime of prison establishments and that Latin American culture has little tolerance towards homosexual practices in general.”¹²⁵ The case was settled before the IACHR decided on the merits but is nonetheless significant in that the IACHR deemed the case admissible under the right to privacy.¹²⁶

Karen Atala and daughters v Chile is the most recent case found admissible by the IACHR involving issues of sexual orientation. The petitioners argued that Chile violated the rights of Karen Atala and her three daughters when the Fourth Chamber of the Supreme Court, on May 31, 2004, awarded permanent custody of Atala’s daughters to their father. In reaching its decision, the Chilean court determined “that Ms. Atala had put her interests before those of her daughters when she made the decision to be open about her homosexuality and began to live with a same-sex partner.”¹²⁷ The case was deemed admissible under article 24 of the American Convention on the right to equal protection. It is still pending before the IACHR.

Other Relevant National and Regional Decisions

In 2003, in *Van Kuck v Germany*, the Europe Court of Human Rights considered the case of a transsexual woman whose health insurance company had denied her reimbursement for costs associated with sex-reassignment surgery. The Court found a violation of the right to respect for private life; it stated that the insurance company’s decision denied “the applicant’s freedom to define herself as a female person, one of the most basic essentials of self-determination.” It also noted that “the very essence of the Convention being respect for

¹²⁴ IACHR, *Annual Report of the Inter-American Commission on Human Rights 2002*, OEA/Ser.L/V/II.117, March 7, 2003, <http://www.cidh.org/annualrep/2002eng/toc.htm> (accessed April 21, 2009), para. 7.

¹²⁵ IACHR, *Martha Lucía Álvarez Giraldo v. Colombia*, Report 71/99, Case 11.656, May 4, 1999, <http://www.cidh.org/annualrep/99eng/admissible/colombia11656.htm> (accessed April 21, 2009), para. 2.

¹²⁶ American Convention on Human Rights, Article 11(2),.

¹²⁷ IACHR, *Karen Atala and Daughters v Chile*, Report No. 42/08, July 23, 2008, <http://www.cidh.org/annualrep/2008eng/chile1271.04eng.htm> (accessed April 14, 2009).

human dignity and human freedom, protection is given to the right of transsexuals to personal development and moral security.¹²⁸

Other decisions at the European level have stressed the illegality of discrimination on the grounds of gender identity. In *Goodwin v United Kingdom* as well as *I v. United Kingdom*, the European Court of Human Rights held that the United Kingdom's refusal to change transgender individual's legal identities and papers to match their post-operative genders violated their right to respect for their private lives.¹²⁹

National courts have gone further to protect gender identity as an essential part of human dignity. In a 2006 decision, the Supreme Court of South Korea ruled in favor of a transsexual individual's right to change her name and sex on her legal documents. The Court held that "transsexuals' human dignity is protected by the Korean Constitution and that maintaining transsexuals' original sex designation in the register compromises that right to dignity."¹³⁰

In 2008, the Nepal Supreme Court studied a petition by Blue Diamond Society, an LGBT organization in Nepal. The group sought the protection of the state in guaranteeing equality and freedom from violence. The court recognized the petitioners' right to be protected against discrimination based on gender identity in all areas of their lives. It concluded,

As the people with third type of gender identity other than the male and female and different sexual orientation are also Nepali citizens and natural person they should be allowed to enjoy the rights with their own identity as provided by the national laws, the Constitution and international human rights instruments. It is the responsibility of the state to create an appropriate environment and make legal provisions accordingly for the enjoyment of such rights. It cannot be construed that only "men" and "women" can enjoy such rights and other people cannot enjoy them solely because they have a different gender identity and sexual orientation.¹³¹

¹²⁸ *Van Kuck v Germany* (Application No. 35968/97), June 12, 2003, www.echr.coe.int. (accessed April 21, 2009), para. 73.

¹²⁹ *Goodwin v United Kingdom* (Application No. 28957/95), July 12, 2002, paras. 90 and 91; *I v United Kingdom* (Application no. 25680/94), July 11, 2002, www.echr.coe.int. (both accessed April 21, 2009), para. 57.

¹³⁰ Holning Lau, "Sexual Orientation and Gender Identity: American Law in Light of East Asian Developments," presented at the Williams Institute's Works-in-Progress Series, p. 95 (on file with Human Rights Watch).

¹³¹ Nepal Supreme Court, Writ No. 917, *Blue Diamond Society v Office of the Prime Minister and Council Ministers et. al.*, 2 NJALJ (2008) 261-286, translated into English by Mr. Yadav Pokharel (on file with Human Rights Watch).

The court called on the state to

[c]reate an appropriate environment, enact legal provisions to enable LGBTI [lesbian, gay, bisexual, transgender, and intersex] people to enjoy fundamental rights, and amend the new constitution so as to guarantee nondiscrimination on the grounds of gender identity and sexual orientation as well as sex, in line with the Bill of Rights of the Constitution of South Africa.