



“It’s What Happens When You Look Like This”

**Violence and Discrimination Against LGBT People in
Guatemala**

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Violence and Discrimination Against LGBT People in Guatemala

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Glossary

Bisexual: The sexual orientation of a person who is sexually and romantically attracted to both women and men.

Cisgender: Denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth.

Gay: A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.

Gender: The social and cultural codes (linked to but not congruent with ideas about biological sex) used to distinguish between society’s conceptions of “femininity” and “masculinity.”

Gender Identity: A person’s internal, deeply felt sense of being female or male, both, or something other than female or male.

Heterosexual: The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

Homophobia: Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.

Homosexual: The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

Intersex: An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

LGBT: Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as “sexual and gender minorities.”

LGBTI/LGBTQ/LGBTIQ/LGBTQI: Umbrella terms used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are queer and/or intersex.

Non-Binary: Gender identity of people who identify as neither female nor male.

Queer: An inclusive umbrella term covering multiple identities, sometimes used interchangeably with “LGBTQ.” Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

Sexual Orientation: The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or other sex, or to both or others.

Sexual Violence: Any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.¹

Transgender: The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

Transgender Men: Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

Transgender Women: Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

Transphobia: Fear of, contempt of or discrimination against transgender persons, usually based on negative stereotypes of transgender identity.

¹ International Criminal Court, “Elements of Crimes,” <https://legal-tools.org/doc/3coe2d> (accessed September 17, 2020).

Travesti: A term that has different meanings in different cultural contexts, but in Central America is generally claimed by people assigned male at birth, who transit towards the female gender. *Travestis* do not necessarily identify as women and sometimes use the term to denote a political identity.

Summary

During the first four weeks of 2021, at least five gay and transgender people were reportedly killed in Guatemala. The spate of killings was, sadly, not out of the ordinary: in 2020, human rights ombudsperson Jordán Rodas said, at least 19 people known to be lesbian, gay, bisexual or transgender (LGBT) were murdered in Guatemala. He called on the Attorney General's office to establish a special unit to investigate anti-LGBT hate crimes.

LGBT people in Guatemala face a complex web of violence and discrimination that threatens their physical safety, limits their life choices, and in some cases leads them to flee their country. Some described violence at the hands of family members, leading them to flee home at as young as eight years old. Others described bullying and discrimination that drove them out of school or limited their academic success. Although no statistics are available on LGBT people's economic situation in Guatemala, many interviewees told us that family rejection and discrimination lead to a higher likelihood of economic marginalization, particularly for trans women, several of whom said they could not find any job other than sex work. Poverty in turn places LGBT people at high risk of violence from gang members, from other members of the public, and from police and other members of the security forces. And while victims of violence in Guatemala generally face monumental challenges obtaining redress in the face of fragile institutions, corruption and gang influence, LGBT victims often face an additional barrier in the form of stigma and discrimination from the very law enforcement agents charged with keeping them safe.

The Guatemalan government should take meaningful and rights-respecting steps through legal or policy reform to protect against discrimination on these grounds in all sectors, including employment, education, housing, health care, and access to goods and services. It should strengthen existing systems for tracking and investigating crimes based on anti-LGBT animus and bring to justice those responsible, with particular attention to holding accountable public officials who carry out or are complicit in violence or discrimination on the grounds of gender identity or sexual orientation. It should establish administrative procedures for legal gender recognition that allow trans people to obtain documents that reflect their gender identity without unnecessary hurdles. Guatemala's leaders should make unambiguous statements of support for the rights of LGBT people, including the right to non-discrimination and the right to be free from violence.

In 2020, Guatemala rang in the year with the news of a horrific murder of a trans woman, Jennifer Ávila, killed on New Year's Day. Without significant effort from the Guatemalan government, 2021 is looking no better. LGBT people in Guatemala should not face the bleak prospect of another year of more death and suffering in their communities. The government should step up to make clear that anti-LGBT violence is intolerable and should adopt the necessary measures to stem it.

Recommendations

To the President and the Executive Branch

- Through the Secretariat for Planning and Programming, formulate policies advancing the protection and promotion of LGBT people's human rights. Engage directly with civil society organizations that promote and defend LGBT rights to discuss how best to improve protection of the rights of LGBT people.
- Fulfill the commitment made to the Inter-American Commission on Human Rights in November 2012 to establish a comprehensive public policy to guarantee LGBT and intersex people's enjoyment of their rights.
- Express public support for the work of the Human Rights Ombudsperson's Office in advancing the protection of LGBT people's rights.
- Require all ministries and other government agencies to prohibit discrimination on the grounds of sexual orientation and gender identity in hiring, contracting, and all other activities, and to take steps to counter systemic anti-LGBT discrimination.

To the Attorney General's Office

- Conduct prompt, thorough, and independent investigations into crimes against LGBT people to hold those responsible accountable.
- Issue guidance indicating that the Law on Femicide is applicable to violence against transgender women.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including prosecutors, receive training on sexual orientation and gender identity in order to assist them in identifying such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

To Congress

- Pass Initiative 5674 of 2019 on the prevention and punishment of bias-based crimes against LGBT people.

- Withdraw Initiative 5272, the Life and Family Protection Act, from consideration.
- Cease efforts to remove the current Ombudsperson based on his stances in support of LGBT people’s rights and access to abortion.
- Pass comprehensive civil non-discrimination legislation that explicitly includes sexual orientation and gender identity as protected classes and that covers sectors including, inter alia, education, employment, health and housing, and ensure that any existing civil non-discrimination legislation is also applicable to discrimination on the grounds of sexual orientation and gender identity.
- Pass a gender identity law that allows people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the Civil Registry. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one’s gender.

To the Ministry of Interior

- Issue a regulation clearly prohibiting discrimination on the basis of sexual orientation or gender identity and hold accountable law enforcement officers who engage in such discrimination.
- Conduct monitoring and evaluation of existing systems to track bias-motivated crimes. Ensure that all officials who receive complaints, including police, receive training on sexual orientation and gender identity in order to assist them in identifying such crimes, and that they systematically ask complainants to indicate whether they (or the victim) may have been victimized on the basis of sexual orientation or gender identity.

To the Ministry of Social Development

- Establish support services for young people, including both children and young adults, who are expelled from their homes for reasons related to their sexual orientation or gender identity, including shelter, counseling services, educational services and job training.

To the Ministry of Education

- Adopt an anti-discrimination policy that requires all schools, public and private, not to discriminate against students on the basis of sexual orientation, gender identity or gender expression.
- Adopt an anti-bullying policy that requires all schools to take measures to prevent and respond to instances of bullying based on sexual orientation, gender identity and gender expression.
- Ensure that all curricula, including comprehensive sexuality education curricula, include and reinforce acceptance of sexual and gender diversity.
- Provide students who have dropped out before completing high school, including LGBT people, with opportunities to complete their high school education, and reach out to LGBT organizations to ensure that LGBT young adults are aware of such opportunities.

To the Ministry of Labor

- Launch a public campaign to inform employers and jobseekers that discrimination based on sexual orientation or gender identity is illegal.

To the National Statistics Institute

- Ensure the collection of data on discrimination, economic marginalization, and social exclusion on the grounds of sexual orientation and gender identity and the impact of such exclusion on economic development and individual well-being.

To Donors and Development Partners

- Provide adequate financial and technical support to accountability mechanisms in Guatemala aimed at investigating and documenting bias-based crimes, including within offices of the Attorney General and the Human Rights Ombudsperson's Office.
- Provide financial and technical support to LGBT-led organizations in Guatemala in all aspects of their work, including those related to documentation of human rights violations, advocacy, economic empowerment, and service provision.

- Publicly speak out in support of the rights of LGBT people and urge the Guatemalan government to adopt policies to combat violence and discrimination against LGBT people.
- Provide emergency assistance to LGBT people and human rights defenders working on issues related to gender and sexuality in Guatemala when they face security threats.

Methodology

This report is comprised of the Guatemala-focused sections of a longer, multi-country Human Rights Watch report, “*Every Day I Live in Fear: Violence and Discrimination Against LGBT People in El Salvador, Guatemala and Honduras and Obstacles to Asylum in the United States*,” published in October 2020.² Human Rights Watch researchers interviewed 53 survivors of anti-LGBT abuses from Guatemala, including seven lesbian or bisexual women, 24 gay or bisexual men, 19 trans women, one trans man, one non-binary person, and one *travesti*, an identity that is on a spectrum of transiting from male to female.³ Forty-seven of them were living in Guatemala at the time of the interview, and were interviewed in Guatemala City, Huehuetenango, Jalapa, Guastatoya, and Quetzaltenango in May and August 2019. Six were asylum seekers or refugees, interviewed in the United States (Los Angeles and Washington, DC) in December 2019 and Mexico (Tijuana) in January 2020. Human Rights Watch also interviewed 21 other people in Guatemala including representatives of LGBT organizations and other human rights organizations and government officials, and communicated by phone and email with journalists, United Nations officials, and a wide range of organizations working on LGBT issues and refugee issues in the Northern Triangle of Central America and the United States.

The research focuses on violence and on economic marginalization, which puts LGBT people at greater risk of violence. For that reason, the report includes cases of discrimination in education and employment but does not include other forms of discrimination such as in medical settings. Although we did document several such cases of discrimination, including sexual harassment from health providers on the grounds of sexual orientation or gender identity, these incidents did not clearly contribute to economic marginalization or physical violence. The exclusion of such incidents should not

² Human Rights Watch, “*Every Day I Live in Fear: Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States*,” October 2020, <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador#2311>.

³ Not all interviewees disclosed both their gender identity and their sexual orientation, and there may be some overlap between categories. For instance, a trans woman or man may also be lesbian, gay, or bisexual, but given the nature of the qualitative interviews conducted, some interviewees only identified themselves as trans without discussing their sexual orientation.

be taken to suggest that these are not serious human rights violations that merit further investigation and reporting.

Interviewees who were victims of human rights violations were reached with the support of domestic LGBT rights organizations in Guatemala, or with the support of immigration lawyers and organizations providing support services to asylum seekers and refugees in Mexico and the United States. Spanish-speaking Human Rights Watch researchers conducted the interviews in Spanish. Most interviews were conducted one-on-one in a private space, while some were conducted in small groups of individuals who knew one another and expressed comfort in speaking together. No compensation was provided to interviewees.

In addition, Human Rights Watch conducted a literature review, including reports published by human rights organizations, the Inter-American Commission on Human Rights, United Nations agencies, and the US Department of State. Human Rights Watch also issued information requests to the Guatemalan government in July 2019, asking for available data on the number of cases of violence against LGBT people that had been reported to police, the number prosecuted, and the number resulting in convictions, and again in September 2020, asking for further information on efforts to combat violence and discrimination based on gender identity and sexual orientation. Responses are included as annexes to this report.

I. Background

Their intention is to erase what is not normal.

—Juan Pablo Escalante, gay activist, Huehuetenango, Guatemala, August 5, 2019.

United Nations High Commissioner for Human Rights Michelle Bachelet, in a January 2020 report, referred to Guatemala’s “challenging human rights context, with persisting high levels of inequality, discrimination, insecurity and impunity.”⁴ Guatemala City is one of the most violent cities in Latin America. In 2018, 42.5 homicides were registered per 100,000 inhabitants.⁵ Powerful criminal organizations, “among the most sophisticated and dangerous in Central America,” control people and territory through violence and extortion.⁶ Gang-related violence is persistent and pervasive.⁷ Dozens of local and transnational gangs, in many cases exported from the United States as a result of past deportations of members of street gangs initially formed in US cities in the 1980s and 90s, have a presence in Guatemala, controlling the lucrative local drug trade and using violence as a tool to extort money and ensure compliance.⁸ The most dominant gangs are Mara Salvatrucha 13, also known as MS-13, and the 18th Street Gang, also known as Barrio 18, which currently operates as two separate factions.⁹

⁴ UN Human Rights Council, “Situation of Human Rights in Guatemala: Report of the High Commissioner for Human Rights,” A/HRC/43/3/Add.1, January 17, 2020, <https://undocs.org/en/A/HRC/43/3/Add.1> (accessed September 11, 2020), p. 2, para. 5.

⁵ Maria Alejandra Navarrete and Anastasia Austin, “Capital Murder: 2019 Homicide Rates in Latin America’s Capital Cities,” Insight Crime, March 5, 2020, <https://www.insightcrime.org/news/analysis/2019-homicides-latin-america-capital> (accessed September 11, 2020). Other parts of Guatemala have less instances of violence than Guatemala City, but rates remain high: overall, there were 22.4 homicides per 100,000 inhabitants in 2018. Chris Dalby and Camilo Carranza, “Insight Crime’s 2018 Homicide Round-Up,” InSight Crime, January 22, 2019, <https://www.insightcrime.org/news/analysis/insight-crime-2018-homicide-roundup> (accessed September 11, 2020). This compares to, for instance, 5.9 homicides per 100,000 inhabitants in Washington, DC. Dan Taylor, “FBI Crime Stats: See Where DC Stands,” Patch, October 3, 2019, <https://patch.com/district-columbia/washingtondc/fbi-crime-stats-see-where-dc-stands> (accessed September 11, 2020).

⁶ “Guatemala Profile,” InSight Crime, <https://www.insightcrime.org/guatemala-organized-crime-news/guatemala> (accessed September 11, 2020).

⁷ Jonathan Pedneault (Human Rights Watch), “The Long Journey to the US Border,” commentary, *Los Angeles Review of Books*, August 31, 2019, <https://www.hrw.org/news/2019/08/31/long-journey-us-border>; Daniel Denvir, “Deporting People Made Central America’s Gangs. More Deportation Won’t Help,” *Washington Post*, July 20, 2017, <https://www.washingtonpost.com/news/posteverything/wp/2017/07/20/deporting-people-made-central-americas-gangs-more-deportation-wont-help> (accessed September 10, 2020).

⁸ “Guatemala Profile,” InSight Crime, <https://www.insightcrime.org/guatemala-organized-crime-news/guatemala>.

⁹ International Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America*, April 6, 2017, https://d2071andvipowj.cloudfront.net/062-mafia-of-the-poor_o.pdf (accessed September 10, 2020).

Impunity plagues the criminal justice system, and long delays impede accountability. Victims find it difficult to obtain redress for crimes ranging from corruption to gang-related violence to crimes against humanity committed during Guatemala's 36-year civil conflict. Police rarely investigate gang-related violence, and most killings are never prosecuted.¹⁰ The United Nations-backed International Commission against Impunity in Guatemala (CICIG), established in 2007, played a significant role in dismantling criminal networks. Still, President Jimmy Morales declined to extend its mandate after it sought to strip his presidential immunity to investigate him.¹¹ Current President Alejandro Giammattei, elected in 2019 on a platform to boost economic growth and control violence, supported ending CICIG's mandate.¹² Intimidation of judges and prosecutors and corruption in the justice system remain problems.¹³

Poverty and economic insecurity affect many Guatemalans. The United Nations Development Programme (UNDP) reported that in 2019, more than 28 percent of the population suffered multidimensional poverty, which refers to the cumulative effects of poverty including on education, health, living standards, quality of work and exposure to violence.¹⁴ LGBT people may bear a particularly high burden of poverty: Guatemala's Human Rights Ombudsperson's Office described as "worrying" a finding that 58 percent of LGBTQI people surveyed by his office in 2017 made less than 5,000 *quetzales* (about US\$650) per month.¹⁵

¹⁰ Adriana Beltrán, "Children and Families Fleeing Violence in Central America," WOLA, February 1, 2017, <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle> (accessed September 10, 2020).

¹¹ "Guatemala's President Shuts Down Anti-Corruption Commission Backed by U.N.," *Associated Press*, reprinted in *New York Times*, August 31, 2018, <https://www.nytimes.com/2018/08/31/world/americas/guatemala-corruption-commission-morales.html> (accessed September 11, 2020).

¹² Dina Fernandez, "Giammattei: Official, Prisoner, and Now President-Elect" ("Giammattei: Funcionario, preso y ahora Presidente electo"), *Soy 502*, August 12, 2019, <https://www.soy502.com/articulo/giammattei-funcionario-presos-ahora-presidente-electo-149> (accessed September 11, 2020).

¹³ "Guatemala: Congress Assaulting Judicial Independence," Human Rights Watch news release, November 17, 2020, <https://www.hrw.org/news/2020/11/17/guatemala-congress-assaulting-judicial-independence>.

¹⁴ UNDP, *Human Development Report 2019: Guatemala*, http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GTM.pdf (accessed September 11, 2020). Multidimensional poverty is assessed by means of indicators on health (nutrition and child mortality), education (years of schooling and school attendance), and standard of living (electricity, sanitation, drinking water, housing, cooking fuel, assets). Scores under 1/3 indicate multidimensional poverty. UNDP, *Human Development Indices and Indicators: 2019 Statistical Update, Technical Notes*, http://hdr.undp.org/sites/default/files/hdr2018_technical_notes.pdf (accessed September 11, 2020), pp. 9-11.

¹⁵ Procuraduría de los Derechos Humanos (Human Rights Ombudsperson's Office), *Baseline LGBTI (Línea Base LGBTI)*, August 2018, https://drive.google.com/file/d/1q5Dn82UF_yTKfR6PRcKzqmtlFzyRtoqC/view (accessed September 11, 2020), p. 15.

Sexual Orientation and Gender Identity in Guatemala

Legal and Policy Context

Guatemala has no comprehensive civil law that explicitly protects against discrimination or addresses hate crimes on the basis of sexual orientation or gender identity.

Guatemala's Human Rights Ombudsperson's Office has condemned the absence of public policy to address anti-LGBT discrimination, pointing out that "LGBTIQ people who have been victims of crimes based on sexual orientation or gender identity have been totally invisibilized, especially with regard to the crime of discrimination," in the Guatemalan justice system.

Non-Discrimination

Article 202 *bis* of the penal code prohibits discrimination based on gender, race, ethnicity, language, age, religion, economic status, sickness, disability, marriage status, or "any other motive, reason or circumstance," punishing discrimination with up to four years in prison.¹⁶ According to statistics provided by the Attorney General's Office, there are no recorded cases in which anyone has been convicted of discrimination on the grounds of sexual orientation or gender identity.¹⁷ The absence of explicit mention of sexual orientation and gender identity may contribute to a context in which employers, landlords, health care facilities, schools, and other public and private institutions are unlikely to be held accountable for discrimination against LGBT people.¹⁸

¹⁶ Congress of the Republic of Guatemala, Decree 57-2002, <http://scm.oas.org/pdfs/2002/cp10270.pdf> (accessed September 11, 2020), art. 1. Sentences are one to three years in prison and a fine, and can be augmented by 30 percent under aggravating circumstances, including when the accused is a public official. As the Guatemalan LGBT rights organization *Visibles* points out, the law can be read as inclusive of sexual orientation and gender identity, even though they are not specifically included as protected grounds. *Visibles, Violence Against the LGBTIQ Population: Experiences and Dynamics that Sustain it (Violencia Contra la Población LGBTIQ: Vivencias y dinámicas que la sostienen)*, 2020, https://visibles.gt/wp-content/uploads/2020/05/Violencia_contra_la_poblacion_LGBTIQ.pdf (accessed September 11, 2020), pp. 20-21. Human Rights Watch is unaware of any case in which the law has been used to prosecute an act of anti-LGBT discrimination.

¹⁷ See Annex II.

¹⁸ Procuraduría de los Derechos Humanos, "Contribución del Procurador de Derechos Humanos de Guatemala al Informe del experto independiente de Naciones Unidas sobre protección contra la violencia y la discriminación por orientación sexual e identidad de género" ("Guatemalan Human Rights Ombudsperson's Contribution to the Report of the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity), February 2019, <https://www.ohchr.org/Documents/Issues/SexualOrientation/Data/GuatemalaOmbudsperson.docx> (accessed September 11, 2020). One exception to this invisibility is the Migration Code of 2016, which includes a provision protecting migrants from discrimination on various grounds, including sex and sexual orientation. Migration Code, Decree No. 44-2016, <http://igm.gob.gt/wp-content/uploads/2017/09/CODIGO-MIGRACION-DTO-44-2016.pdf> (accessed September 11, 2020).

In December 2019, Congressmember Karina Paz introduced a bill, pending at time of writing, that would amend article 202 bis to explicitly include sexual orientation and gender identity.¹⁹ While the impetus to amend the penal code to punish discrimination against LGBT people reflects an effort to further inclusiveness, the criminal law should not be the primary framework used to protect against discrimination and to hold accountable those who discriminate. To effectively curtail systemic discrimination, Guatemala should prioritize adopting comprehensive civil and administrative laws banning discrimination. While the use of the criminal law is warranted when discrimination manifests itself in particular egregious forms—notably, acts of violence or incitement to violence—its focus on criminal intent, which needs to be established beyond a reasonable doubt, is inadequate to capture and sanction much discriminatory behavior. Legislators should focus on adopting a comprehensive civil law prohibiting discrimination as the primary tool to prevent and provide recourse for discriminatory acts.

Guatemalan law does contain some non-criminal legal protections against discrimination. For example, the labor code protects against discrimination in employment on grounds of race, religion, political opinion, and socioeconomic status. However, it makes no mention of sexual orientation or gender identity and does not contain an expansive provision including “other grounds.”²⁰

Legal Gender Recognition

Discrimination against transgender people flourishes in a context in which no law allows transgender people to change their gender markers on official documents. The absence of legal gender recognition in Guatemala means that every time a transgender person is required to present an identification document, they risk being subjected to humiliation, discrimination, and even violence.²¹

¹⁹ Oscar Garcia, “Bill to Prevent Discrimination Against LGBTIQ People Presented” (“Presentan iniciativa de ley para prevenir la discriminación contra personas LGTBIQ”), *Guatevision*, December 18, 2019, <https://www.guatevision.com/nacionales/presentan-iniciativa-de-ley-para-prevenir-la-discriminacion-contra-personas-lgtbiq> (accessed September 11, 2020).

²⁰ Código de Trabajo de Guatemala (Labor Code of Guatemala), Decree No. 1441, <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gto15es.pdf> (accessed September 11, 2020). *Visibles* argues that the Labor Code could be read in conjunction with constitutional rights provisions in such a way that LGBT Guatemalans could make a case for recourse for employment discrimination, but many Guatemalan LGBT people may be unaware of the existence of such possibilities for legal recourse. *Visibles, Violencia Contra la Población LGBTIQ*, https://visibles.gt/wp-content/uploads/2020/05/Violencia_contra_la_poblacion_LGBTIQ.pdf, pp. 19-20.

²¹ Neela Ghoshal and Kyle Knight, “Rights in Transition: Making Legal Recognition for Transgender People a Global Priority,” Human Rights Watch, World Report 2016, <https://www.hrw.org/world-report/2016/rights-in-transition>.

A November 2017 advisory opinion issued by the Inter-American Court of Human Rights (IACtHR) stated that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression—as member states, including Guatemala, are obligated to do under the American Convention on Human Rights—states should establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements, such as medical or psychiatric evaluation or divorce.²² In contrast to several other Latin American countries, Guatemala has taken no steps to implement such measures.²³

Congressmember Sandra Morán, a lesbian, who made history in 2015 as the first openly lesbian, gay, bisexual, or transgender person elected to Congress, attempted to introduce such a law in 2017 (Initiative 5395). The bill was referred to the Women’s Commission and the Legislative Commission within Congress, which both gave it an unfavorable opinion in August 2018, meaning the bill never advanced to a vote in Congress.²⁴ Women’s Commission President Aníbal Rojas objected based on the claim that legal gender recognition could bring about marriage between two men.²⁵

Bias-Motivated Crimes

In 2008 Guatemala passed a law against femicide and other forms of violence against women, including physical and sexual violence. The law makes femicide, defined as the

²² Inter-American Court of Human Rights, Advisory Opinion OC-24/17, November 24, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf (accessed September 10, 2020), pp. 43-72; Neela Ghoshal (Human Rights Watch), “For LGBT Rights, 2018 Will Be the Year of the Courts,” commentary, *Advocate*, January 24, 2018, <https://www.hrw.org/news/2018/01/24/lgbt-rights-2018-will-be-year-courts>.

²³ “OAS Presents Report on the Official Recognition of Gender Identity in the Countries of the Hemisphere,” OAS news release, E-058/20, June 2, 2020, https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-058/20 (accessed September 10, 2020).

²⁴ Comisión de la Mujer, Congreso de la Republica (Women’s Commission, Guatemalan Congress), “Dictamen No 02-2018,” Re/: /ICDLM-012-AERE- cmcv-2018 Guatemala, September 25 2018, https://www.congreso.gob.gt/assets/uploads/info_legislativo/dictamen/1539621334_Dictamen%205395%20CM.pdf (accessed September 11, 2020); “Congress Violates the Rights of LGBTIQ People With Unfavorable Opinion” (“Congreso vulnera derechos de personas LGBTIQ con dictamen desfavorable”), *Visibles*, August 29, 2018, <https://www.visibles.gt/congreso-vulnera-derechos-de-personas-lgbtiq-con-dictamen-desfavorable> (accessed September 11, 2020).

²⁵ Dulce Rivera, “Gender Identity Law Receives Unfavorable Opinion” (“Ley de identidad de género recibe dictamen desfavorable”), *Guatavision*, August 29, 2018, <https://www.guatavision.com/noticias/nacional/ley-identidad-genero-dictamen-desfavorable> (accessed September 11, 2020).

“violent death of a woman by virtue of her gender, as it occurs in the context of the unequal gender relations between men and women,” punishable by 25 to 50 years in prison. Other forms of violence against women are punishable by five to 12 years in prison.²⁶ The Femicide Law, which supplements the penal code, is notable not only for longer sentences but also for the obligations it imposes on the state, including providing shelter for domestic violence survivors and collecting data on violence against women: obligations which the state has, by and large, failed to meet.²⁷ The law has also rarely resulted in convictions.²⁸ An assistant prosecutor told REDLACTRANS researchers in 2012 that the Femicide Law does not apply to trans women.²⁹

In 2017, Congressman Morán introduced Initiative 5278, a bill that would have amended article 27 of the penal code to punish hate crimes based on sexual orientation, gender identity, age and religion as aggravated offenses, and would also have criminalized anti-LGBT discrimination.³⁰ The bill was rejected in a congressional committee and did not advance to a vote.³¹ Morán reintroduced a new hate crimes initiative, Initiative 5674, in

²⁶ Congress of the Republic of Guatemala, Decree 22-2008, Law Against Femicide and Other Forms of Violence Against Women (*Ley Contra el Femicidio y otras Formas de Violencia Contra la Mujer*), May 2, 2008, https://www.oas.org/dil/esp/ley_contra_el_femicidio_y_otras_formas_de_violencia_contra_la_mujer_guatemala.pdf (accessed September 11, 2020), arts. 6-7. In comparison, the penal code punishes homicide with 15 to 40 years in prison, and premeditated murder with the same penalty as that provided for femicide; for assault, it provides for between six months and 12 years in prison depending on the gravity of the physical impact suffered. Republic of Guatemala, Penal Code, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf (accessed September 11, 2020), arts. 123, 132 (homicide and aggravated murder), 145-148 (assault).

²⁷ “Guatemala: Submission to the Human Rights Committee for the 11th Session,” The Advocates for Human Rights, August 2015, https://www.theadvocatesforhumanrights.org/uploads/guatemala_hrc_loipr_august_2015.pdf (accessed September 11, 2020).

²⁸ Héctor Ruiz, “No Justice for Guatemalan Women: An Update Twenty Years After Guatemala’s First Violence Against Women Law,” *Hastings Women’s Law Journal* vol. 29:1, winter 2018, https://cgrs.uchastings.edu/sites/default/files/Hector%20Ruiz_Guatemala%20VAW%20Article_2017.pdf (accessed September 11, 2020).

²⁹ *Ibid.*; REDLACTRANS, *The Night is Another Country: Impunity and Violence Against Transgender Women Human Rights Defenders in Latin America*, May 2012, <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English1.pdf> (accessed September 11, 2020), p. 30.

³⁰ Congress of the Republic of Guatemala, Initiative 5278, *Ley para Sancionar los Crímenes por Prejuicio (Law to Sanction Bias-Based Crimes)*, introduced August 27, 2017, on file with Human Rights Watch; Henry Estuardo Pocasangre and Jessica Gramajo, “Bill Proposes Punishing Homophobia” (“Iniciativa propone sancionar la homofobia”), *Prensa Libre*, May 4, 2017, <https://www.prensalibre.com/guatemala/politica/iniciativa-propone-sancionar-la-homofobia> (accessed September 11, 2020).

³¹ Inter-American Commission on Human Rights, Informe Anual 2018, Chapter V, Follow-up on Recommendations Made by the IACHR in its Country or Thematic Reports, Follow-up Report on Recommendations Made by the IACHR in the Report on the Situation of Human Rights in Guatemala (Capítulo V, Seguimiento de Recomendaciones Formuladas por la CIDH en sus Informes de País o Temáticos, Informe de Seguimiento de Recomendaciones Formuladas por la CIDH en el Informe sobre Situación de Derechos Humanos en Guatemala), <http://www.oas.org/es/cidh/docs/anual/2018/docs/IA2018cap.5GU-es.pdf> (accessed September 11, 2020), p. 662.

December 2019, which would compel the government to uphold a commitment made to the Inter-American Commission on Human Rights in 2020, during a hearing on Discrimination based on Sexual Orientation and Gender Identity in Guatemala, to establish a comprehensive national plan to protect LGBT and intersex rights. The initiative would also require the Ministry of Education to put in place an anti-bullying plan aimed at protecting LGBT students, and the Ministry of Social Development to establish programs to combat the social marginalization of trans people.³²

The Attorney General's Office does attempt to track anti-LGBT hate crimes. In 2014, through its case management system, SICOMP, the Attorney General's Office introduced a box that the official receiving a complaint could tick if the person filing the complaint self-identified as LGBT. But several interviewees told Human Rights Watch the box is not used as a matter of practice. Lucía, a lesbian who filed a report after her girlfriend became violent with her and robbed her, said, "The girl who took the report didn't know where the box was to mark that I was LGBT."³³ Noelia A., who accompanied another trans woman to file a report after she had been attacked, said, "The prosecutor that assisted us addressed her as a man. And he told me that it was not possible to put 'trans woman' in the file. We asked him to do it, but he told me, 'No.'"³⁴ The Inter-American Commission on Human Rights has noted that throughout the Americas:

Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as 'men dressed in women's clothes.'³⁵

³² Congress of the Republic of Guatemala, *Bill to Prevent and Punish Bias-Based Crimes (Proyecto de Ley Para Prevenir y Sancionar Crímenes Por Prejuicio)*, introduced December 11, 2019, on file with Human Rights Watch; Eddy Coronado and Dulce Rivera, "Congressmember Calls for Stronger Sentences for Crimes Against the LGBT Community" ("Diputada pide mayor sanción por crímenes contra comunidad LGBT"), *Prensa Libre*, December 11, 2019, <https://www.prensalibre.com/guatemala/politica/diputada-pide-sancionar-personas-que-cometan-crimenes-contra-comunidad-lgbt> (accessed September 11, 2020).

³³ Human Rights Watch interview with Lucía (last initial withheld), Quetzaltenango, May 8, 2019.

³⁴ Human Rights Watch interview with Noelia A. (pseudonym), Guatemala City, August 12, 2019.

³⁵ Inter-American Commission on Human Rights, *Violence Against LGBTI Persons*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf> (accessed September 10, 2020).

Anti-LGBT Initiatives

Guatemala's halfhearted efforts to stem discrimination and violence against LGBT people are further undermined by government support for discriminatory measures. These include the proposed Life and Family Protection Bill, which would institutionalize discrimination against LGBT people in Guatemala.

In 2018, Evangelical leaders drafted and introduced the Life and Family Protection bill in Congress as a popular initiative.³⁶ The bill, approved by Congress in an initial reading in August 2018, defines marriage as a union between a man and a woman. The bill describes “sexual diversity” as “incompatible with the biological and genetic aspects of human beings.” It establishes that “freedom of conscience and expression” protects people from being “obliged to accept non-heterosexual conduct or practices as normal,” a provision that could be used to justify discriminatory denial of services. The Evangelical leader behind the Life and Family Protection Bill told media that the bill also aimed at “preventing Guatemala from engaging on any [international] convention on gender diversity.”³⁷ Incoming President Giammattei stated during the election campaign that he supported the bill.³⁸ At time of writing, the bill still needed further legislative approvals in the form of a third reading in Congress before the president could sign it into law.

In the absence of strong protective laws or public policy, the Human Rights Ombudsperson's Office, a quasi-independent body within the Guatemalan government, has stepped in to vociferously support LGBT people's rights.³⁹ In June 2020, several lawmakers attempted to remove the Ombudsperson from office for using a rainbow flag on social media to commemorate Pride month, and for releasing videos calling on the

³⁶ A “popular initiative” is introduced by members of the public through a petition gathering signatures, rather than by a member of Parliament. In addition to its anti-LGBT provisions, the bill expands the criminalization of abortion and could subject women who have miscarriages to prosecution. “Guatemala: Reject ‘Life and Family Protection’ Law,” Human Rights Watch news release, August 31, 2018, <https://www.hrw.org/news/2018/08/31/guatemala-reject-life-and-family-protection-law>.

³⁷ Diana Cariboni, “Evangelicals in Guatemala on Verge of ‘Legalising Homophobia,’” *openDemocracy*, December 13, 2018, <https://www.opendemocracy.net/en/5050/evangelicals-guatemala-legalising-homophobia> (accessed September 11, 2020).

³⁸ Angel García, “Alejandro Giammattei Rejects Gender Ideology and Supports the Life and Family Protection Law” (“Alejandro Giammattei rechaza ideología de género y apoya la Ley de Protección a la Vida y la Familia”), *Emisoras Unidas*, July 30, 2019, <https://emisorasunidas.com/2019/07/30/alejandro-giammattei-ley-de-proteccion-a-la-vida-y-la-familia> (accessed September 11, 2020).

³⁹ Procuraduría de los Derechos Humanos de Guatemala, *Annual Report on Activities and the Situation of Human Rights, 2019 (Informe Anual Circunstanciado De Actividades Y De La Situación De Los Derechos Humanos, 2019)*, January 2020, <https://t.co/681PONQH80?amp=1> (accessed September 11, 2020), pp. 249-252.

government to fulfill its international obligation to prevent anti-LGBT violence and discrimination. At time of writing, the attempt had not succeeded.⁴⁰ Congress passed a budget in November 2020 that would significantly cut the budget for the Human Rights Ombudsperson’s Office. As of this writing, Congress had retracted the budget proposal following massive protests over other cuts.⁴¹

Social Stigma

In this challenging legal context, LGBT activists have made some progress in pushing for respect and equality, including within the political sphere. Sandra Morán, elected to Congress in 2015, came from a background of activism, as one of the organizers of Guatemala’s first known lesbian collective in the 1990s.⁴² Morán only served one term, but in 2019 Guatemala’s first openly gay male Congressman, Aldo Dávila, followed in her footsteps in Congress. Even electoral success, though, is not a buffer against social stigma. Dávila filed a complaint with congressional leadership in March 2020 after other legislators shouted homophobic insults at him in the congressional chamber.⁴³

The same kind of insults plague ordinary LGBT Guatemalans on the streets, in their schools, on the web, and in their workplaces. Sécia G. of the lesbian organization ODISCEA said that her organization had “received a lot of hate mail via website, along the lines of ‘why do you exist if you give nothing back to society’—referring to the fact that we [lesbians] wouldn’t have children.”⁴⁴ Paloma C., a trans woman in Guatemala City, told Human Rights Watch that public humiliation, including mockery of her gender identity, is “so common that we just assume that it will happen.”⁴⁵ Dolores F., a trans woman from Chichicastenango, said that she had heard people referring to trans women as

⁴⁰ “Guatemala: Rights Official at Risk of Dismissal,” Human Rights Watch news release, July 22, 2020, <https://www.hrw.org/news/2020/07/22/guatemala-rights-official-risk-dismissal>.

⁴¹ “Guatemala: Investigate Excessive Use of Force by Police,” Human Rights Watch news release, November 24, 2020, <https://www.hrw.org/news/2020/11/24/guatemala-investigate-excessive-use-force-police>.

⁴² Nina Lakhani, “In Guatemala to be a Feminist is Not Welcomed, a Lesbian, Even Less so. I am a Lesbian Feminist,” *Guardian*, February 11, 2016, <https://www.theguardian.com/global-development-professionals-network/2016/feb/11/guatemala-feminist-lesbian-sandra-moran> (accessed September 11, 2020).

⁴³ Angel García, “Faced With Homophobic Insults Against Deputy Aldo Dávila, Calls to Investigate Congressmembers” (“Ante insultos homofóbicos contra diputado Aldo Dávila piden investigar a congresistas”), *Emisoras Unidas*, March 11, 2020, <https://emisorasunidas.com/2020/03/11/aldo-davila-acusa-de-diputados-de-mofarse-de-su-orientacion-sexual> (accessed September 11, 2020).

⁴⁴ Human Rights Watch interview with Sécia G., coordinator of ODISCEA, Guatemala City, May 8, 2019.

⁴⁵ Human Rights Watch interview with Paloma C. (pseudonym), Guatemala City, May 10, 2019.

“demons.”⁴⁶ Brandon Saucedo, a gay activist in Huehuetenango department who self-describes as having an androgynous appearance, with long hair and earrings, said:

I came out of the closet at age 14, but I don’t dare to go out alone at night, for fear of what might happen. Even six and seven-year-old children shout ‘faggot’ at me in the street.⁴⁷

In rural areas, LGBT issues are particularly taboo, and information about sexual orientation and gender identity is in short supply. The likelihood of social rejection keeps many LGBT people closeted, leaving people who are discovering their sexual or gender identity with few role models.⁴⁸ LGBT people also experience rejection from their families. Darwin N., a 22-year-old gay man from a small town in Jalapa who provides informal support for many other young gay people, told Human Rights Watch:

Various people told me that they wanted to take their lives because of the rejection [they suffered] from their family [upon coming out]. A few have tried to.... The last time I heard [something like that] was three days ago. We spoke that same day. At the moment he wanted to do it, he called me... This year, 10 [LGBT people in my town] have tried to commit suicide so far.⁴⁹

Lupita L., a lesbian activist in Quetzaltenango, described how a friend died by suicide after facing family rejection: “They said she was no longer part of the family. She told me she didn’t know what to do.... She killed herself.”⁵⁰

In some cases, family rejection takes the form of forcing or pushing LGBT family members to undergo conversion therapy, offered by both mental health professionals and religious leaders, sometimes in the form of exorcism of purported demons.⁵¹ Geraldo R., a 23-year-

⁴⁶ Human Rights Watch interview with Dolores F. (pseudonym), Guatemala City, August 12, 2019.

⁴⁷ Human Rights Watch interview with Brandon Saucedo, Huehuetenango, August 5, 2019.

⁴⁸ Human Rights Watch interview with Secia G., coordinator of ODISCEA, Guatemala City, May 8, 2019.

⁴⁹ Human Rights Watch interview with Darwin N. (pseudonym), Jalapa, August 13, 2019.

⁵⁰ Human Rights Watch interview with Lupita L. (pseudonym), Quetzaltenango, August 7, 2019.

⁵¹ Pia Flores, “Being Gay: They Wanted to ‘Cure’ Me Through Exorcism and Placement in a Children’s Home” (“Ser gay: Quisieron ‘curarme’ con un exorcismo y con el Hogar Seguro”), *Nómada*, February 7, 2018, <https://nomada.gt/identidades/ser-gay-quisieron-curarme-con-un-exorcismo-y-con-el-hogar-seguro> (accessed September 11, 2020).

old gay man in Jalapa, said that when he was 17, his parents sent him to a two-week church-based conversion therapy camp. The 13 boys and three girls at the camp, he said, spent the entire day in individual therapy with psychologists and psychiatrists. He recalled that they showed him videos of a young man and woman having sex and asked him how he felt. Geraldo came out of the camp convinced he could not change his sexual orientation, but as he told Human Rights Watch, “I had to pretend that I had changed, so that they wouldn’t make me stay at the camp for weeks or months more. I had to resort to getting my best female friend to pretend that we were a couple.”⁵²

To cope with immense family pressure, some gay men and lesbians acquiesce to heterosexual marriages. Marco Antonio H., a gay activist from a small town in Huehuetenango, said:

You can’t tell anyone in the community. And people get married, due to social and family pressure. You do it to reduce the risk of violence and because social isolation is powerful.⁵³

Family rejection causes some LGBT children to flee their homes. Miriam D., a 33-year-old trans woman in Quetzaltenango, told Human Rights Watch:

Ever since I expressed my orientation, my family started to discriminate against me. I was raped, but my family didn’t believe me, and I left home at 12 years old.⁵⁴

Miriam D. said that she had been selling sex since she was 14 years old. International law on the rights of the child makes clear that child prostitution is one of the worst forms of child labor. States should prosecute those who use children in this manner and should provide assistance to children who are commercially sexually exploited.

⁵² Human Rights Watch interview with Geraldo R. (pseudonym), Jalapa, August 13, 2019.

⁵³ Human Rights Watch interview with Marco Antonio H. (pseudonym), Huehuetenango, August 5, 2019.

⁵⁴ Human Rights Watch interview with Miriam D. (pseudonym), Quetzaltenango, August 7, 2019. Human Rights Watch considers engagement of children in sex work sexual exploitation and one of the worst forms of labor. Anyone who uses, offers, obtains, procures or provides a child for such use should be prosecuted while children engaged in sex work should be provided all appropriate assistance, including assistance in their physical and psychological recovery and social reintegration, and where necessary, protective measures should be taken.

Noelia A., a 42-year-old trans woman who leads a collective of trans sex workers in Guatemala City, described the marginalization that leads many trans women to sex work:

We have been forgotten. We have had to do sex work because of the stigma [that being a trans woman carries] and because of discrimination from [our] family and at work.⁵⁵

Noelia A. said that she had been trained as a cook and a pastry chef, but that she had faced discrimination working in restaurants: “Here, if we sell food, people won’t buy from us because they say that we have HIV.”⁵⁶

Marco Antonio H., the gay activist in Huehuetenango, described the isolation of trans women in the conservative municipality of 50,000 people in which he was raised:

You aren’t given any work opportunities if you’re different.... In the municipality there are three trans women, and all they can do is work in a dive bar and provide sexual services. It’s very much under wraps. Everyone in the municipality knows them and treats them badly, but they’re still there. One of them got a loan through a women’s group and people accused her of robbery and chased her out from where she lived with her family. People don’t respect them, drunk men touch them...⁵⁷

Gabriela Mundo, an official at the Human Rights Ombudsperson’s Office, told Human Rights Watch that far-right groups foment anti-LGBT views: “The anti-rights discourse, especially as regards women and LGBTQ people, is very present. It’s a discourse from ultra-right-wing groups which is used to support attacks against LGBTQ people.”⁵⁸

Guatemala’s population is roughly 44 percent indigenous, according to official statistics.⁵⁹ Arcadio S. and Sabino C., Maya Quiché activists working with the indigenous LGBT

⁵⁵ Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

⁵⁶ Ibid.

⁵⁷ Human Rights Watch interview with Marco Antonio H., Huehuetenango, August 5, 2019.

⁵⁸ Human Rights Watch interview with Gabriela Mundo, Guatemala City, May 8, 2019.

⁵⁹ Instituto Nacional de Estadística de Guatemala, “Resultado del Censo 2018,” <https://www.censopoblacion.gt/cuantosomos> (accessed September 11, 2020).

organization Kajib Kawoq, said that homophobia in contemporary indigenous communities was in part a legacy of Spanish colonialism and the imposition of Catholicism on Mayan communities, and that churches were a significant source of anti-LGBT discrimination.⁶⁰ Arcadio S. said that for the Quiché people, one of Guatemala's 22 indigenous cultures:

Homosexuals have traditionally played an important role in spiritual and artistic leadership. But the imposition of Catholicism changed things: gender stereotypes, “don't wear pink shirts”.... We have a dualistic spirituality, a god that is man and woman. Catholicism changed this.⁶¹

Guatemala also has a large and growing Evangelical (Protestant) population, and some influential Evangelical churches have been at the center of efforts to promote and enact anti-LGBT public policies.⁶² The result is that in some contemporary tight-knit indigenous communities, Catholic and Evangelical religious influence combines with an emphasis on community norms to contribute to a hostile environment for LGBT people.⁶³ Indigenous LGBT people who move to Guatemala City or other cities in search of greater individual freedom or a more dynamic queer community life may then be confronted by discrimination on the basis of their indigeneity.

Combined family rejection, religious-based animus, gang control of territory and right-wing antipathy contribute to conditions in which LGBT people in general, and trans people in particular, experience discrimination and abuse.

⁶⁰ Human Rights Watch interview with Arcadio S. and Sabino C., Quetzaltenango, August 7, 2019.

⁶¹ Human Rights Watch interview with Arcadio S., Quetzaltenango, August 7, 2019.

⁶² Cariboni, “Evangelicals in Guatemala on Verge of ‘Legalising Homophobia,’” *openDemocracy*, <https://www.opendemocracy.net/en/5050/evangelicals-guatemala-legalising-homophobia>.

⁶³ Human Rights Watch interviews with Arcadio S. and Sabino C., Quetzaltenango, August 7, 2019.

II. Violence Against LGBT People in Guatemala

2020 commenced with the murder of a transgender woman. On New Year’s Day, Jennifer Ávila, from the small Western Guatemala town of Mazatenango, was found seriously injured, bearing signs of torture and sexual assault. She died in the hospital.⁶⁴ Jennifer Ávila was one of at least 19 LGBT people murdered in Guatemala in 2020, according to the Human Rights Ombudsperson.⁶⁵

Of the 53 LGBT Guatemalans whom Human Rights Watch interviewed, 7 said they had personally experienced violence related to their gender identity or sexual orientation, but at least 11 more said they had been personally impacted by the murder or serious assault of an LGBT friend or acquaintance, or by stories of other LGBT people killed in their locality. In Quetzaltenango, activists with the queer women’s organization Vidas Paralelas recited stories of trans women they had known who had been killed over the years; some shot, some strangled.⁶⁶ Human Rights Watch interviewed several LGBT people in Jalapa and Guastatoya who described instances of violence against other LGBT people they knew that appeared to be hate crimes, including the murders of at least two trans people in Jalapa and an 18-year-old gay man in Guastatoya in 2018.⁶⁷

In Huehuetenango, several interviewees spoke of the unsolved murder of José Díaz, an 18-year-old gay man killed by stoning on March 25, 2019.⁶⁸ Two days after Díaz—a peer educator with the organization Gente Positiva—disappeared on March 25, 2018, his friend Yancy S. heard that Díaz’s body had been found at a construction site. He rushed to the scene of the crime. Yancy S. told Human Rights Watch:

⁶⁴ Salazar, “35-year-Old Trans Woman Stoned to Death in Guatemala” (“Lapidaron a una mujer trans en Guatemala: tenía 35 años”), *Presentes*, <https://agenciapresentes.org/2020/01/02/lapidaron-a-una-mujer-trans-en-guatemala-tenia-35-anos>.

⁶⁵ Procurador de los Derechos Humanos, “16/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, condena el recrudecimiento de asesinatos de personas LGBTIQ+ y recomienda al Ministerio Público prestar prioridad a su esclarecimiento” (“16/21 The Human Rights Ombudsperson, Jordán Rodas Andrade, Condemns the Increase in Killings of LGBTIQ+ People and Calls on the Public Ministry to Prioritize its Clarification”), January 28, 2021, <https://www.pdh.org.gt/comunicacion/noticias/16-21-el-procurador-de-los-derechos-humanos-jordan-rodas-andrade-condena-el-recrudecimiento-de-asesinatos-de-personas-lgbtiq-y-recomienda-al-ministerio-publico-prestar-prioridad-a-su-esclarecimiento.html> (accessed February 4, 2021).

⁶⁶ Human Rights Watch interview with members of Vidas Paralelas, Quetzaltenango, August 7, 2019.

⁶⁷ Human Rights Watch interviews, Jalapa, August 13, 2019, and Guastatoya, August 15, 2019.

⁶⁸ Human Rights Watch interviews, Huehuetenango, August 6, 2019.

When I arrived at the scene of the crime, the police were approaching the area where he had been found. I told the guys there that I was looking for a friend, and then I saw the body.... The body was face down and had an '18' written on the cheek. It was behind a wooden galley, like a room where they keep construction materials.⁶⁹

Human Rights Watch spoke to several of Díaz's friends, who were not sure why he had been targeted. At time of writing, two years later, no one had been arrested for the murder.

Guatemala's Attorney General's Office, in principle, keeps records on the sexual orientation or gender identity of crime victims and complainants. Guatemalan authorities told Human Rights Watch that they had records of 51 criminal complaints between 2016 and 2019 in which an LGBT person was the victim. They said that four of these crimes had resulted in convictions.⁷⁰

But Marlon González, a friend of José Díaz, described challenges he faced in trying to get the murder case registered as LGBT-related. González said he had to proactively ask the person who recorded his complaint to make note of González's sexual orientation, as the complainant, and that it did not seem obvious to the staffer where to record it:

I had to file a complaint before the Attorney General's Office, and on the information sheet there is a box to check for LGBT. The person who took the complaint didn't even know how to write the word gay. I told her that she had to scroll up on the form and I showed her where she had to click. I had to repeat it ['gay'] two times.⁷¹

Even with systems in place to track anti-LGBT hate crimes, LGBT people in Guatemala said that impunity was the norm. In some cases, impunity followed from police discrimination or indifference. Noelia A., a trans activist in Guatemala City, described calling the police

⁶⁹ Human Rights Watch interview with Yancy S. (pseudonym), Huehuetenango, August 6, 2019.

⁷⁰ Human Rights Watch asked for information on the types of crimes and the sexual orientation or gender identity of the victims. The Attorney General's Office reported that there were convictions in the cases of a sexual assault in 2017, a homicide of a trans person in 2018, and a homicide and a rape in 2019. Only in the 2018 homicide case was the victim's sexual orientation or gender identity officially registered. Ministerio Público, RESOLUCIÓN UIP/G 2019 — 005356 / bglpda, EXP UIP 2019-00254, July 22, 2019, on file with Human Rights Watch.

⁷¹ Human Rights Watch interview with Marlon González, Huehuetenango, August 5, 2019.

when a trans friend was attacked, for the second time in short succession, by a neighborhood taxi driver who had previously hit her with a baseball bat:

We went to call the police to say that she had been attacked. The same young man attacked her again when she came out of the hospital, and we called the police but they said, ‘It’s a faggot that they’re beating.’⁷²

In other cases, police inaction was related to fear of gangs. Lupita L., a lesbian in Quetzaltenango, recounted: “A friend of mine was assassinated by the male ex-partner of her girlfriend. I went to the police to report it and they said they wouldn’t take the case because the ex is a gang member.”⁷³

Violence against transgender women in some parts of Latin America is of such significant magnitude that activists have coined the term “transfemicide” or “transfeminicide,” referring to the murder of trans women because of their gender, as female, and gender identity as trans women.⁷⁴ The term acknowledges the intersectional violence and discrimination that trans women face under patriarchal social structures built around rigid gender norms and roles.

One way in which the Guatemalan authorities facilitate anti-trans violence is by placing trans women in men’s prisons, exposing them to violence, including sexual assault. Bárbara Herrarte, a trans activist with the organization REDMMUTRANS (*Red Multicultural de Mujeres Trans*, Multicultural Network of Trans Women) Guatemala, described her experience in a men’s prison: “Always, at night, someone got in my bed and forced me to have sex with him.”⁷⁵

Carlos Valdés of Lambda, an LGBT rights organization in Guatemala, told Human Rights Watch that violence against LGBT people in Guatemala is so common that it leads to what Lambda describes as forced internal displacement.⁷⁶ LGBT people may be forced to move

⁷² Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

⁷³ Human Rights Watch interview with Lupita L., Quetzaltenango, August 6, 2019.

⁷⁴ Transfemicide/transfeminicide has been recognized officially as a category of violence by the governments of Argentina and of Mexico City, both of which have among the world’s most rights-respecting gender identity laws.

⁷⁵ Human Rights Watch interview with Bárbara Herrarte, Guatemala City, May 10, 2019.

⁷⁶ Asociación Lambda, *Sin Raíz (Rootless)*, 2016, pp. 48-49 (on file with Human Rights Watch).

or to live on the run because of gang violence. Such violence, endemic in Guatemala, may also target LGBT people in particular because of anti-LGBT sentiments along with their perceived vulnerability, which makes them easy prey for gangs bent on extortion or forced collaboration. Economic marginalization leaves many LGBT people without stable livelihoods and few housing options outside of poor and often gang-controlled neighborhoods, putting them further at risk of violence.⁷⁷ LGBT people may be victims of family violence, expelled or abused by parents, guardians, or partners. LGBT people may also be displaced due to hostility from neighbors. These various forms of violence leave many LGBT people living in fear. For some, the best solution is to leave Guatemala altogether.

Domestic Violence

“The nuclear family is one of the earliest and most common aggressors against LGBTI people,” reports the Guatemalan LGBT rights organization Lambda, describing such violence as intended to “convert” LGBTI children into a cis-heteronormative framework.⁷⁸ Guatemala’s Human Rights Ombudsperson’s Office has also reported on intimate partner violence against LGBT people, specifically violence against lesbian and bisexual women from former male partners.⁷⁹

Human Rights Watch interviewed three LGBT people who experienced serious abuse as children or young adults in their parents’ homes. Basilio A., a 24-year-old gay man, was adopted at six months old and grew up in a rural area near the central Guatemalan town of Cobán. His adoptive father beat him on various occasions throughout his childhood. Basilio realized that he was gay at around age 15 and began making connections on social media with other LGBT people, some in Guatemala, most in Mexico. In 2014, when Basilio was 18, his adoptive father learned of his sexual orientation from looking at messages on Basilio’s phone:

⁷⁷ Guatemala does not maintain statistics that track economic vulnerability among LGBT people. The World Bank has urged countries to collect such data, in countries where it does not pose a risk to the privacy and security of LGBT individuals. World Bank and UNDP, *Investing in a Research Revolution for LGBTI Inclusion*, November 2016, <http://documents.worldbank.org/curated/en/196241478752872781/pdf/110035-WP-InvestinginaResearchRevolutionforLGBTIInclusion-PUBLIC-ABSTRACT-SENT.pdf> (accessed September 10, 2020).

⁷⁸ *Ibid.*, pp. 28, 43-44.

⁷⁹ Procuraduría de los Derechos Humanos (Human Rights Ombudsperson’s Office), *Baseline LGBTI (Línea Base LGBTI)*, https://drive.google.com/file/d/1q5Dn82UF_yTKfR6PRcKzqmtIFzyRtoqC/view.

My father found all my conversations on the phone. He started to beat me. I was bleeding from the nose, the mouth. He was saying, ‘What, so you’re a faggot, so you like men.’ I tried to claim the conversations belonged to a school friend [who was using my phone]. My father grabbed me by the neck. He was trying to strangle me. [After the beating] I had bruises all over my legs. I stayed in the house for weeks. I stopped going to school.⁸⁰

Basilio A. fled home to escape the violence, moving to Guatemala City at age 19. For a month, he slept under a bridge. When a market vendor learned Basilio was homeless, she invited him to stay with her family, but there, he said, “Her sons forced me to have sex with them. I was a sex slave. The lady knew.”⁸¹ He eventually fled to Mexico.

Carlitos, 23-year-old non-binary person from Chiquimula who was assigned female at birth, was subjected to various forms of violence and discrimination, including sexual assault by a neighbor, described below. Family violence ultimately convinced Carlitos they could not safely remain in Guatemala:

I really left the country because one of my brothers tried to abuse me. It was the worst, because I could have never imagined a member of my family could have hurt me.⁸²

Carlitos described how “Herman,” about nine years older than Carlitos, had been physically abusive for years: “He liked to beat me since I was nine years old. It was always because I was different.”⁸³ When Carlitos was 16, Herman threatened to sexually assault them:

I was in the house; I had just come home from high school. [My brother] said ‘I was waiting for you, people told me they saw you with a girl, are you a dyke, you like girls?’ I didn’t answer. He grabbed me by the neck and said, ‘If you’re a dyke, I’m going to make you a woman.’ I kicked him in the

⁸⁰ Human Rights Watch interview with Basilio A. (pseudonym), Tijuana, January 31, 2020.

⁸¹ Ibid.

⁸² Human Rights Watch interview with Carlitos (last initial withheld), Los Angeles, December 9, 2019.

⁸³ Ibid.

stomach and took off running. I went to my aunt's house and told her. She told me to stay there until my mom came home. But when she told my mom, my mom said, 'He's the oldest, he needs to correct his siblings.'⁸⁴

The second time Herman threatened to sexually assault Carlitos, Carlitos was 19 years old:

I arrived home and I was alone making food. He arrived... and I said, 'I'm leaving.' He said, 'Why are you leaving, you're afraid of me?' He started to beat me hard. He said, 'Today I'm going to make you a woman.' I hit him in the head. Then he came with a piece of wood, and said 'I'm going to kill you.'⁸⁵

Herman eventually stopped the beating, and afterwards, Carlitos's sister convinced them to file criminal charges against Herman. When Carlitos first went to the police station, police officers laughed at their gender expression, they recalled, but some neighbors who were aware of the abuse came to Carlitos' defense. "They arrested him because the neighbors also came and said, 'If you leave him, he's going to kill her.'"⁸⁶

Carlitos moved out of their mother's house and rented a room while the case against Herman proceed through the court. Three years later, a court in Chiquimula sentenced Herman to five years in prison. However, Carlitos's mother paid a bond which allowed Herman to receive a commuted sentence of five years on parole with no time served in prison, a possibility Guatemala's penal code provides in some cases when sentences are five years or less. Carlitos concluded, "I thought that the law would protect me, but there is no law that protects LGBT people."⁸⁷

The lack of protection ultimately led Carlitos to flee Guatemala. They first went to El Salvador while the case against their brother was progressing through the courts, "because I didn't want to be there [Guatemala] anymore."⁸⁸ Carlitos hoped to continue

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

their studies in El Salvador, but could not afford it, so they worked for six months at a low-paying job. They came back to Guatemala for their brother's sentencing. Afterward, they recounted:

After the last court date, my mother was saying that I was no longer her daughter, that I should forget she was my mother and forget my family. I couldn't afford to be in El Salvador anymore and then I heard about the caravan from Honduras. I only had 800 quetzales (US\$104) left. And then the caravan passed through Chiquimula and I went.⁸⁹

Eddie, a 24-year-old trans woman in Huehuetenango, said that when she was 15, her mother told her to stop being a “faggot” and threw an iron at her, hitting her in the side of the head and causing bleeding that required hospital treatment. Her mother kicked her out of the house for two weeks after attacking her, and she stayed with her father. After two weeks, she asked to return home, and her mother agreed.⁹⁰

Violence by Gangs and Members of the Public

Street gangs, including the two factions of Barrio 18 and Mara Salvatrucha 13 (MS-13) are active throughout Guatemala, especially in urban areas.⁹¹ Three LGBT Guatemalans told Human Rights Watch they experienced violence or death threats clearly linked to gangs, while a fourth experienced extortion and threats that she assumed came from gangs, although the perpetrators did not identify themselves as such.

Kennedy W., a trans woman from the department of Izabal, whom Human Rights Watch interviewed when she was applying for asylum in the United States, fled home due to family rejection at age 11. She met a group of older trans sex workers in Guatemala City who she said sexually exploited her for the next 14 years, pimping her out to clients and pocketing their payments. When Kennedy W. was 16 years old, she was raped by seven men whom she identified as gang members, resulting in injuries so severe she had to be

⁸⁹ Ibid.

⁹⁰ Human Rights Watch interview with Eddie P. (pseudonym), Huehuetenango, August 5, 2019.

⁹¹ “Guatemala Profile,” InSight Crime, <https://www.insightcrime.org/guatemala-organized-crime-news>.

hospitalized for 18 days. “They came after me because my brother was a rival gang member,” she told Human Rights Watch.⁹²

When Kennedy W. managed to leave those exploiting her and began doing sex work on her own at age 25, gangs, and police officers linked to gangs, extorted her, regularly taking almost all the money she made. Kennedy told Human Rights Watch:

If I lost my asylum case and had to go back to Guatemala, I think I would be assassinated. Because you have to work your whole life to pay extortion money, and I wouldn’t do it.⁹³

Miriam D. of Organización Trans Reinas de la Noche (OTRANS), which works with trans sex workers, described how she fled to Mexico in 2016 after gang members extorted her and threatened to kill her for not paying. She said gang members had already killed other trans women in Quetzaltenango, and she took the threats seriously. When she got to Mexico, she was not aware of how to apply for asylum, and after three days there, she was deported.⁹⁴

Mynor, a non-binary person from Puerto Barrios, Izabal, who uses male pronouns, said that in May 2019, gang members attacked him and attempted to extort money from him, prompting him to flee to the United States and seek asylum:

I came [to the United States] because they threatened me. Two men beat me up in the house. They called me a ‘fucking faggot’ [and said], ‘You’re going to die if you don’t pay us.’ I didn’t have the money they asked for, and I knew they were going to kill me if I didn’t pay them. I had seen this happened to other people who were extorted.

They said they knew where I lived, where I went, they already knew everything. They wanted 10,000 quetzales (about US\$1,300).

⁹² Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

⁹³ Ibid.

⁹⁴ Human Rights Watch interviews with Miriam D., Quetzaltenango, August 7, 2019, and by telephone, August 4, 2020.

It hurts, because I left my mom and my family. I never even usually left my department [Izabal]. I never wanted to leave my family.⁹⁵

Ale D., a 32-year-old trans woman from Guatemala City, left Guatemala in 2018 due to extortion and threats—she believed by gang members—and an inadequate and discriminatory police response. She recounted:

I'm a fashion designer and makeup artist. I received a lot of calls [from one number], and when I answered, someone first asked for makeup treatment, but then started trying to extort me.... He called me names like faggot, son of a bitch, when he called me. 'We know where you live, we're going to kill you, we know which stop you get off and that you walk two blocks.'⁹⁶

In November 2018, Ale attempted to file a complaint at a police station in the Trebol neighborhood of Guatemala City:

I explained that I was receiving death threats, that I was afraid. They asked for evidence. I showed them the calls on my phone, showed them the number that called me. They called the number, and there was no answer. They said, 'We can't do anything for you.' I said, 'But here's the number.' They said, 'No, we can't do anything for you, get out.' I saw another woman come in and they wrote down her statement without her bringing in any evidence. I came back and said, 'Why can't you take my case?' and they said, 'Get out, goddamn faggot.' They never wrote down my complaint.⁹⁷

Ale said she stopped answering the calls, but the person then began harassing her through a fake Facebook profile, continuing to threaten her life. She began planning to leave Guatemala:

I had my little tailor shop there, my two mannequins. I didn't know what to do, the police didn't help me at all. I was 32, I had my life already

⁹⁵ Human Rights Watch interview with Mynor (last initial withheld), Los Angeles, December 12, 2019.

⁹⁶ Human Rights Watch interview with Ale D., Washington, DC, December 5, 2019.

⁹⁷ Ibid.

established. I didn't want to leave, running from my country, my land, where I was born. You leave and you are alone.⁹⁸

Ale had already been a victim of violence. In 2013, three men attacked her when she went to Taco Bell for a late-night snack after performing at a drag show, still dressed in women's clothing:

They were drunk, three of them, and they started to insult me, then beat me up... They were saying 'Faggot, son of a bitch, you all should be dead.' I talked back, and that's how the fight started. One of them stood up and pull off my wig. The other two both jumped on me. They hit me with a bottle, on the forehead, on the back. I had the two cuts from the bottle, and other bruises, and no one did anything to help me. It was three against one, I couldn't do anything.... No one defended me. I was knocked unconscious and taken to the hospital.⁹⁹

Michelle S., a 25-year-old trans woman from El Salvador, fled to Guatemala at age 18 to escape the threat of violence from gang members: "I went to Guatemala so they wouldn't kill me."¹⁰⁰ But she nearly faced death in Guatemala, where she survived by doing sex work:

A man came for [sexual] services. But there were four other men in the car, and they said that they were going to kill me because they don't like trans women.¹⁰¹

Michelle, who said she had started carrying a knife after experiencing violence, said she managed to cut one of them and jump out of the car; she showed Human Rights Watch a scar on her forehead from her fall onto the road. She added:

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Human Rights Watch interview with Michelle S., Washington, DC, December 6, 2019.

¹⁰¹ Ibid.

I didn't go to the police; they never do anything. A friend of mine was beaten, and they almost took her eye out and she called the police and they never did anything.¹⁰²

The attacks against Ale and Michelle, like other cases of violence against LGBT people that Human Rights Watch documented, may or may not have been linked to gangs. Some violence against LGBT people in Guatemala is perpetrated by hostile members of the public. Gay activist Juan Pablo Escalante, from Huehuetenango department, said that many hate crimes have nothing to do with gangs: "Hate crimes in Huehue are by ordinary civilians, sometimes organized. Their intention is to erase what is not normal."¹⁰³

Iván R., 31, survived a murder attempt in 2014 in Guastatoya, El Progreso department. Iván R. told Human Rights Watch that he "used to be trans but now I'm afraid," and now uses male pronouns. A beautician by trade, Iván had performed as Paquita La Del Barrio, a Mexican singer who has become a gay icon, in a drag show in the town of Usumatlán, Zacapa department, after the town festival. After the show, at around 2 a.m., he was waiting for two friends on a street corner when two motorcycles, each carrying two people, pulled up. Iván R. recounted:

The motorcycles stopped in front of me and they said: 'Hello Paquita'. And I said: 'Hello'... When I turned to look, a guy was aiming at me with a gun.... I could only see half of their faces, I didn't know them. They shot me. After they shot me four times—twice in my leg and twice in my abdomen—I tried to run, but I couldn't. I fell and turned around and he was aiming at me with the gun and it only did 'tsk-tsk'; it was jammed. I thought: 'This is it for me.' I told them, 'Don't shoot me.' He [then] changed the magazine, aimed at me again, but it didn't shoot. It only did 'tsk' again.¹⁰⁴

At that moment, other people leaving the festival approached, and the motorcyclists fled.

¹⁰² Ibid.

¹⁰³ Human Rights Watch interview with Juan Pablo Escalante, Huehuetenango, August 5, 2019.

¹⁰⁴ Human Rights Watch interview with Iván R., Guastatoya, El Progreso, August 15, 2019.

Iván R. was hospitalized for 10 days, undergoing surgery to remove the bullets. Persistent leg pain related to the shooting made it impossible to work on his feet, and Iván R. was also afraid to leave home, causing him to give up his salon:

I spent two years at home, not even going to open the door out of fear. I had a lot of anxiety. I kept hearing the sound of the gun firing, all around me. I made *tamales* and *chuchitos* [Guatemalan tamales without filling] in my home, and my sisters helped me out by selling them.¹⁰⁵

Iván had not received threats before the shooting and did not know who his attackers were, but told Human Rights Watch, “I think it’s about machismo.”¹⁰⁶ In 2016, after recovering physically and mentally, he opened another salon in a different town, in nearby Zacapa department. But in April 2017, unknown assailants shot at the salon.¹⁰⁷ Fearing for his life, Iván fled to Costa Rica for a month. He opened yet another salon in a different town in Zacapa in 2018, but was plagued by text messages extorting money and threatening to kill him if he didn’t pay. Iván R. filed a police report, but to his knowledge the police did not investigate.¹⁰⁸ He told Human Rights Watch, “I keep working, but every day I live in fear.”¹⁰⁹

Estuardo Juárez, an activist with the LGBT rights organization Lambda, said that in one case Lambda had handled, community members in a village in San Juan Sacatepéquez expelled a 17-year-old boy when they found out he was gay. The boy had come to the village to live with his grandparents because his parents did not accept him. According to Juarez:

The community organized itself and wanted to burn the house. The grandparents went out and talked to the people, and the boy managed to flee. People take justice into their own hands in Guatemala.¹¹⁰

¹⁰⁵ Ibid.

¹⁰⁶ Human Rights Watch telephone interview with Iván R., August 4, 2020.

¹⁰⁷ Photos of the salon after the attack are on file with Human Rights Watch.

¹⁰⁸ Human Rights Watch interview with Iván R., Guastatoya, August 15, 2019.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch telephone interview with Iván R., August 4, 2020.

¹¹⁰ Human Rights Watch telephone interview with Estuardo Juarez, December 10, 2019.

Carlitos, a non-binary 23-year-old from Chiquimula, said that a neighbor raped them when Carlitos was eight years old in an assault that bore signs of “corrective” rape:

I went out to buy tortillas. The man, I always noticed he was looking at me, but I was little and didn’t really pay attention. That day, he grabbed me by force and took me to his house. He said, ‘Why do you always dress like a boy?’ I always wore my brother’s clothes. He said, ‘If you tell your father I’m going to kill you.’ He took off my clothes and he raped me. While we were in that room, his two nephews came in and asked, ‘What are you doing?’ He said, ‘Shut up, you’re going to get a piece, too.’ So they all raped me.... The man cleaned me up afterwards and I just went home and went to sleep.¹¹¹

Violence and Harassment by State Security Forces

Human Rights Watch interviewed 10 people who recounted incidents in which state security agents beat them, demanded sex from them, humiliated them, discriminated against them, or harassed them because of their presumed sexual orientation or gender identity. Most of the abuses did not seem to represent top-down orders to target LGBT people, but rather, abuses of power by security officers who know they are not likely to be held accountable.

Most cases of security force abuses reported by LGBT Guatemalans were attributed to police officers. Raya E., a trans woman in Guatemala City, described multiple instances of police abuse. In early 2019, she said, she was walking in Zone 13 when she saw police aggressively detaining a man. The police saw that she was watching and called her over. Then, she said, “They forced me to the ground and violently opened my legs. ‘You’re a man! Give us your bag!’” They took her money and let her go, Raya E. said.¹¹²

Raya E. was already familiar with police violence. In 2017, she was having a drink with a trans woman friend at a bar at around 11:30 p.m. when police officers began harassing them:

¹¹¹ Human Rights Watch interview with Carlitos, Los Angeles, December 9, 2019.

¹¹² Human Rights Watch interview with Raya E. (pseudonym), Guatemala City, August 12, 2019.

Police officers showed up and started bothering us. The police started hitting my friend and they pulled her wig off and started throwing the wig from one police officer to the other.... They wanted to put my friend in the patrol car but I stopped a taxi on the street and we quickly got in.¹¹³

Raya E. had also been assaulted by police while standing on the street with another trans friend, in 2014 or 2015:

While I was talking with a trans friend, transit police hit her with a baton. I asked why they were hitting her, because we weren't doing anything. A police officer hit me on my jaw and for the next two weeks, I could only drink liquids through a straw. He threatened to kill me.¹¹⁴

Juan C., a 24-year-old gay man, described sexual assault at the hands of police in Huehuetenango:

In July 2017, a police patrol car stopped me on the street around midnight. There were four police officers. They shouted at me and then they put me up against the wall to check me. They realized I was gay and told me that I was going to come with them to take a ride in the patrol car. They put me in the back. When we stopped, three of them got out and one stayed inside with me. He made me perform oral sex on him. Afterwards, they dropped me off at the place where they picked me up.... There was nothing I could do [but accept it], otherwise they could have taken me by force.¹¹⁵

Mynor, who is non-binary and uses male pronouns, said that one night in Puerto Barrios when he went out dressed in women's clothing, together with a group of trans women, police pepper-sprayed the group while they stood on a corner, ordering them to go away.¹¹⁶

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Human Rights Watch interview with Juan C., Huehuetenango, August 5, 2019.

¹¹⁶ Human Rights Watch interview with Mynor, Los Angeles, December 12, 2019.

Police have raided several LGBT gatherings, including a party at the Gente Positiva headquarters in Guatemala City's Zone 1 after the Pride festival in the early morning hours on July 21, 2019.¹¹⁷ Gaby Dávila, director of Gente Positiva, said police conducting the raid threatened to hit her brother Aldo Dávila, the organization's former director, who had recently been elected to Congress. She said police used pepper spray to disperse revelers. Activists immediately called the Human Rights Ombudsperson's Office to file a complaint.¹¹⁸ They followed up with a police complaint, but according to Dávila, the officers responsible for the abuses were never held accountable.¹¹⁹

Dávila also said that security agents who are part of a *colectivo multisectorial*, a joint unit of the Prosecutor's Office and the Ministry of Health responsible for investigating liquor law violations, have abused their powers by harassing people at LGBT-friendly venues. She mentioned one case in April 2019 when 14 police cars pulled up to raid a gay club. Agents wore balaclavas, carried assault rifles, and photographed clients. Although they made no arrests, the raids intimidated LGBT people.¹²⁰

Stacy Velásquez, executive director of the group OTRANS, told Human Rights Watch that LGBT people typically do not file reports against police for violence or harassment because they fear being victimized as a result. "If you file a report against a police officer, he will know that same day who filed a report against him. That makes you afraid that they'll kill you," Velásquez said.¹²¹

In two cases, interviewees mentioned abuses by members of the Guatemalan Armed Forces. Kennedy W., a trans woman, described being forced to perform oral sex on six

¹¹⁷ Inter-American Commission on Human Rights, "IACHR Expresses Concern About Excessive Use of Police Force Against LGBTI People in Guatemala" ("CIDH expresa preocupación por excesivo uso de la fuerza policial contra personas LGBTI en Guatemala"), August 7, 2019, <https://www.oas.org/es/cidh/prensa/comunicados/2019/196.asp> (accessed September 11, 2020).

¹¹⁸ Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019; Celeste Mayorga, "Police Repress LGBT Pride parties and Threaten Gay Congressman" ("Policía reprimió fiestas del Orgullo LGBT y amenazó a diputado gay"), *Presentes*, July 22, 2019, <https://agenciapresentes.org/2019/07/22/policia-reprimio-fiestas-del-orgullo-lgbt-en-guatemala-y-amenazo-a-diputado-gay> (accessed September 11, 2020). See also Aisling Walsh, "After a Surge in Hate Speech, and Police Raids, Guatemala's LGBTIQ+ Community Fears the Worst is Yet to Come," *openDemocracy*, August 6, 2019, <https://www.opendemocracy.net/en/5050/after-a-surge-in-hate-speech-and-police-raids-guatemalas-lgbtqi-community-fears-the-worst-is-yet-to-come> (accessed September 11, 2020).

¹¹⁹ Human Rights Watch telephone interview with Gaby Dávila, September 3, 2020.

¹²⁰ Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019.

¹²¹ Human Rights Watch interview with Stacy Velásquez, Guatemala City, May 10, 2019.

soldiers.¹²² Gaby Dávila, the executive director of the HIV organization Gente Positiva, which advocates for respect for LGBT rights but is also involved in other human rights mobilizing, described instances of apparent surveillance of Gente Positiva by soldiers in April 2018 and January 2019.¹²³

¹²² Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

¹²³ Human Rights Watch interview with Gaby Dávila, Guatemala City, May 9, 2019.

III. Discrimination: A Pathway to Life on the Margins

LGBT people in Guatemala receive little protection from discrimination, despite the presence on the books of a law that criminalizes discrimination for any motive.¹²⁴ Some, especially those who are trans and gender non-conforming, are pushed into the social and economic margins by a lifetime of discrimination, including in schools and in access to employment, as highlighted in a 2020 report by Guatemala’s Human Rights Ombudsperson’s Office.¹²⁵

Discrimination on the basis of sexual orientation and gender identity is a harm in itself—it violates international human rights law—and is also harmful in that it limits LGBT people’s opportunities and life choices, forcing many into poverty that, as for many impoverished Guatemalans, is compounded by violence.¹²⁶ Gangs often target those living in low-income neighborhoods with violence. Those who do sex work—often one of the only sources of income available to trans people as a result of discrimination at school and in the workplace—are especially likely to face violence from gangs, the police, and clients.

Education Discrimination

No law explicitly prohibits discrimination against LGBT students in Guatemala, and the education ministry has no guidelines aimed at preventing bullying based on sexual orientation or gender identity. Fourteen of the 53 LGBT Guatemalans that Human Rights Watch interviewed said that they experienced bullying and discrimination in schools for demonstrating signs of non-normative sexuality or gender expression, echoing the

¹²⁴ Human Rights Watch believes that criminal law is inadequate to capture and sanction much discriminatory behavior and recommends that countries focus on establishing civil and administrative legal frameworks to address discrimination. See section V.

¹²⁵ Procuraduría de los Derechos Humanos de Guatemala, *Annual Report on Activities and the Situation of Human Rights, 2019 (Informe Anual Circunstanciado De Actividades Y De La Situación De Los Derechos Humanos, 2019)*, <https://t.co/681PONQH8O?amp=1>, pp. 249-252.

¹²⁶ Nelly Erandy Reséndiz Rivera, “Daily Violence, Marginalization, Social Cleansing and Gangs in Guatemala” (“Violencia cotidiana, marginación, limpieza social y pandillas en Guatemala”), *URVIO, Revista Latinoamericana de Estudios de Seguridad*, no. 19:2016, Facultad Latinoamericana de Ciencias Sociales, accessed August 6, 2020, doi:10.17141/urvio.19.2016.2414.

experiences documented in other studies.¹²⁷ For trans people, bullying and discrimination led in some cases to denial of the right to education altogether.

Carlitos, a non-binary 23-year-old from Chiquimula, faced bullying and discrimination in several schools, eventually causing them to drop out. Their experiences with bullying began in primary school, where one teacher in their all-girls school “told the other girls not to hang out with me,” Carlitos recalled. Their schoolmates’ parents told their daughters the same thing, leaving Carlitos with few friends.¹²⁸

On one occasion, a student’s stepfather and cousins physically assaulted Carlitos on school premises. Carlitos recounted being made to feel they were to blame for the incident:

I had a girlfriend at that school. But the kids told her parents. And her stepfather and her two cousins beat me when I was leaving school. The stepfather said, ‘What are you doing with my stepdaughter?’ The cousin grabbed my backpack and threw me to the ground and the man was kicking me on the face and busted my lip open.¹²⁹

Carlitos transferred to a different school the following year, but this did not resolve their problems. There, when they tried to wear boys’ clothes, Carlitos said, “the school director said, ‘I can’t accept this because of the reputation of my school.’”¹³⁰ The discriminatory uniform policy combined with the cost of secondary education led them to drop out of school.¹³¹

Kennedy W., a trans woman from Izabal, said that from the age of nine she had faced attempted sexual assault and school bullying as a result of her gender expression. She left school at age 10, having only completed third grade:

¹²⁷ María Isabel Carrascosa Coll, “Homophobic Bullying” (“Bullying homofóbico”), *Plaza Publica* (Guatemala), July 2, 2014, <https://www.plazapublica.com.gt/content/bullying-homofobico> (accessed October 4, 2020); Carlos Caceres et. al., “‘Era como ir todos los días al matadero...’ El bullying homofóbico en instituciones educativas públicas en Chile, Guatemala y Perú,” November 2013, accessed September 11, 2020, doi:10.13140/RG.2.1.3291.8888.

¹²⁸ Human Rights Watch interview with Carlitos, Los Angeles, December 9, 2019.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

A primary school teacher tried to touch me when I was very little. I told my mother. Nobody listened to me, even my mother, she beat me for lying. The other students threw me in a swamp, beat me, and broke my arm. It's what happens when you look like this. At 10 years my father told me he wasn't going to [pay to] educate me because I was an embarrassment.¹³²

Martin Y., an 18-year-old trans man, was also forced out of school because of transphobia:

In January 2018, my mom and I went to talk with the director of my school ... [My mom] explained that I am a trans boy, that we were processing my name change, and that we wanted for me to be able to use the masculine school uniform. The director got mad and said that if I wanted to continue to go to school, that I had to go as a woman and with the female uniform. I asked if I could think about it for a month. I wanted to continue studying. So in February 2018, we met with the director again and I told her that, OK, I'd continue to use the female uniform. But they told us that there was no space anymore, and that I couldn't matriculate. I knew it wasn't true. I looked for other schools but none wanted to accept me. They said that it was because of 'school policy' that they couldn't accept me.

I sometimes went to the school to pick up my brother and to see friends, those who know of my transition. And then, in March 2018, a school administrator told me that the director had ordered that I was no longer allowed to go near the school, because I 'was confusing the kids' and that parents had complained about that.¹³³

Martin Y. said his brother dropped out of school later that year after being bullied about having a trans brother.¹³⁴

¹³² Human Rights Watch interview with Kennedy W., Los Angeles, December 12, 2019.

¹³³ Human Rights Watch telephone interview with Martin Y., June 19, 2019.

¹³⁴ Ibid.

Others who stayed in school nonetheless endured treatment that compromised their right to education. Basilio A., a gay man from a rural area near Cobán, was 18 years old when his classmates and teachers learned of his sexual orientation. Their bullying, compounded by violence at the hands of his adopted father, described above, led him to consider suicide:

I wanted to kill myself.... I felt terrorized, I didn't know what to do. I was studying in *básico*. My classmates all insulted me, my teachers laughed at me, 'What, you like men?' I thought about jumping off a bridge.¹³⁵

Mynor, a non-binary person from Puerto Barrios, said that they were visibly gender non-conforming from a young age and that when they were around 11, in the fourth grade, a classmate touched their breasts. In response, the teacher beat Mynor, they said: "He beat me for having let the other kid do it."¹³⁶ Ofelia G., a 21-year-old lesbian in Jalapa, described how she and other lesbian friends suffered sexual harassment from classmates:

Some boys would throw *jocote* seeds at us, saying we were lesbians.... There are always comments like, 'You need to try a man.'¹³⁷

Geraldo R., a 23-year-old gay man from Jalapa, said classmates had bullied him in school for his "effeminate manner," but teachers viewed him, not his classmates, as the problem, sending him to school psychologists to attempt to change him.¹³⁸

Raya E., a trans woman from Chimaltenango who identified as gay when she was a student, recollected her experience with a school psychologist at age 16 or 17:

In my secondary school there was a psychologist. When I made 'feminine' gestures, she called me over to tell me not to behave like that. She told me to behave like a man because I was a man and not a woman.... She called in my mother to correct me. My mother scolded me and hit me.¹³⁹

¹³⁵ Human Rights Watch interview with Basilio A., Tijuana, Mexico, January 31, 2020.

¹³⁶ Human Rights Watch interview with Mynor, Los Angeles, December 12, 2019.

¹³⁷ Human Rights Watch interview with Ofelia G. (pseudonym), Jalapa, August 13, 2019.

¹³⁸ Human Rights Watch interview with Geraldo R., Jalapa, August 13, 2019.

¹³⁹ Human Rights Watch interview with Raya E., Guatemala City, August 12, 2019.

Employment Discrimination

LGBT Guatemalans who are forced out of school or whose success in school is compromised by bullying and discrimination are already at a disadvantage in the job market. This disadvantage is compounded by employment discrimination based on gender identity and sexual orientation. Lambda Association describes the work environment in Guatemala as “extremely hostile” for LGBT and intersex people.¹⁴⁰ A 2019 survey of 94 LGBT people in Guatemala City, conducted by a consortium of non-governmental organizations, found that 22 percent of respondents were certain they had been denied employment based on their sexual orientation or gender identity and another 23 percent had been denied employment for reasons that they said may have been linked to their sexual orientation or gender identity. Thirty-one percent of those surveyed had experienced discriminatory treatment at work.¹⁴¹

Geraldo R., a 23-year-old gay man in Jalapa, told Human Rights Watch that when he was 17, his boss at a coffee shop not only fired him but also outed him to his mother after finding out that he was gay:

They fired me for being gay, at a coffee shop. A gay guy came and said to me, ‘Hello, *amiga* [girlfriend]!’ My boss asked the guy, ‘Why did you call him *amiga*?’ He said it was because I was gay, and she asked me if it was true, and I said yes. And she started to treat me badly. It was six years ago, on June 3, 2013. I remember because it was so impactful. She told me I should go to church, and she called my mom.¹⁴²

Carlitos, a non-binary 23-year-old from Chiquimula, said that when they were 17, they applied for a job at a hardware store. “The man said, ‘We don’t give work to people like you, because it gives my business a bad reputation with my clients.’”¹⁴³ Carlitos eventually obtained employment in a shoe store owned by their sister’s friend.

¹⁴⁰ Asociación Lambda, *Sin Raíz*, pp. 30, 55 (on file with Human Rights Watch).

¹⁴¹ Proyecto Convivimos, *Violence in the Workplace Against Lesbians, Gays, and Trans People in Guatemala City (Violencia en espacios laborales hacia lesbianas, gays, y personas trans en la ciudad de Guatemala)*, October 2019, <https://www.flacso.edu.gt/publicaciones/wp-content/uploads/2019/10/Violencia-en-espacios-laborales-LGBTI.pdf> (accessed September 11, 2020), pp. 52-54, 61.

¹⁴² Human Rights Watch interview with Geraldo R., Jalapa, August 13, 2019.

¹⁴³ Human Rights Watch interview with Carlitos, Los Angeles, December 9, 2019.

Trans women are particularly vulnerable to employment discrimination. Yolanda U., an activist with the organization REDMMUTRANS Guatemala summed up: “We don’t have access to employment in Guatemala. We are questioned about our identity, not our qualifications.”¹⁴⁴ At times, the discrimination is blatant, as Ale D., a trans woman in Guatemala City, experienced:

I applied for a job in a restaurant. The boss told me, ‘I can’t give work to a trans woman. People are sensitive, they don’t like that people like you touch their food, they are disgusted by people like you.’

Raya E., a trans woman in Guatemala City, said when she was fired from her job distributing newspapers, a cisgender female colleague told her the supervisor fired her because she was trans.¹⁴⁵ Bárbara Herrarte, a 53-year-old trans woman and member of REDMMUTRANS Guatemala, told Human Rights Watch that she resigned from her job at a fast food restaurant after being forced to wear men’s clothing.¹⁴⁶

Noelia A., in Guatemala City, believes she was denied multiple entrepreneurship opportunities due to anti-trans discrimination. A seasoned cook who had worked in restaurants, Noelia had already reached an agreement with the owner of a property that she wanted to rent to establish her own small restaurant. When she went to sign the contract, however, she said:

He came with his son, and the son looked at me and then spoke [privately] to his father, and then the father told me that he couldn’t rent me the place, that he’d already given it to another woman. It’s always the same—rejection and discrimination.¹⁴⁷

¹⁴⁴ Human Rights Watch interview with Yolanda U. (pseudonym), Guatemala City, May 10, 2019.

¹⁴⁵ Human Rights Watch interview with Raya E., Guatemala City, August 12, 2019.

¹⁴⁶ Human Rights Watch interview with Bárbara Herrarte, Guatemala City, May 10, 2019.

¹⁴⁷ Human Rights Watch interview with Noelia A., Guatemala City, August 12, 2019.

Noelia A. also described being denied a bank loan. “They told me that they couldn’t give a loan to a trans woman.... That was three years ago. I stopped looking for loans because of the shame.”¹⁴⁸

Dolores F., a trans woman living with HIV in Guatemala City, described being sabotaged in business due to bias:

I am in business, I make accessories. A few years ago [in 2015] I had a problem with a neighbor of my shop.... She said that my accessories were contaminated and there were all these rumors and people [stopped] buying from me. I had to close my business.¹⁴⁹

At the time Human Rights Watch interviewed them, Raya E., Noelia A., and Dolores F., were doing sex work to stay afloat.

¹⁴⁸ Ibid.

¹⁴⁹ Human Rights Watch interview with Dolores F., Guatemala City, August 12, 2019.

IV. LGBT Asylum Seekers in Guatemala: A Failed Experiment

In July 2019, the Guatemalan and United States governments signed an Asylum Cooperative Agreement (ACA) one of a number of mechanisms implemented by the United States under the administration of former President Donald J. Trump that sought to aggressively restrict asylum seekers' access to the United States or to US asylum procedures.¹⁵⁰ The agreement enabled the United States to rapidly expel non-Guatemalan asylum seekers to Guatemala without allowing them to lodge asylum claims in the United States. Guatemala initially refused to sign such an agreement with the United States, but succumbed after the United States threatened trade tariffs.¹⁵¹ Under the agreement the United States transferred 939 Honduran and Salvadoran asylum seekers to Guatemala under the US-Guatemala ACA between November 21, 2019 and March 16, 2020, at which point transfers were suspended because of the Covid-19 pandemic.¹⁵² The United States also negotiated Asylum Cooperative Agreements with Honduras and El Salvador.¹⁵³

In February 2021, the administration of new US President Joe Biden announced the suspension and intention to terminate the Asylum Cooperative Agreements, and

¹⁵⁰ A letter issued by President Trump to Congressional leaders in October 2017 set out the administration's intention to reform the US immigration system. It expressed intent to "[s]ignificantly tighten standards and eliminate loopholes in our asylum system," "[e]levate the threshold standard of proof in credible fear interviews," and "[e]xpand the ability to return asylum seekers to safe third countries," among other proposed policy changes. "President Donald J. Trump's Letter to House and Senate Leaders & Immigration Principles and Policies," White House, October 8, 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies> (accessed September 11, 2020).

¹⁵¹ John Wagner, Mary Beth Sheridan, David J. Lynch, and Maria Sacchetti, "Trump Threatens Guatemala After it Backs Away From 'Safe Third Country' Asylum Deal," *Washington Post*, July 23, 2019, https://www.washingtonpost.com/politics/trump-threatens-guatemala-over-delay-in-safe-third-country-asylum-deal/2019/07/23/cc22417e-ad45-11e9-bc5c-e73b603e7f38_story.html (accessed September 11, 2020).

¹⁵² Camilo Montoya-Galvez, "Guatemala Suspends Deportation Flights, Pausing Trump Asylum Deal Over Coronavirus," *CBS News*, March 17, 2020, <https://www.cbsnews.com/news/guatemala-coronavirus-suspends-deportation-flights-trump-asylum-deal> (accessed September 11, 2020).

¹⁵³ Neela Ghoshal (Human Rights Watch), "No Safe Haven for LGBT People in El Salvador," January 8, 2021, <https://www.hrw.org/news/2021/01/08/no-safe-haven-lgbt-people-el-salvador>.

Guatemala also announced the termination of its agreement with the United States.¹⁵⁴ Human Rights Watch documentation provides a cautionary tale regarding the negotiation of safe third country agreements, or other asylum agreements, with countries that are not capable of providing effective protection to asylum seekers, including marginalized groups such as LGBT people.

Guatemala only has a rudimentary and cumbersome asylum procedure, and was unprepared to take on hundreds of additional asylum seekers.¹⁵⁵ Only 20 of the 939 transferees—about 2 percent—applied for asylum in Guatemala.¹⁵⁶ None of them, as of January 2021, had yet been granted asylum.¹⁵⁷ As Human Rights Watch and Refugees International argued in a May 2020 report, Guatemala does not provide access to a full and fair asylum procedure and does not provide effective protection for asylum seekers. The United States, therefore, violated its domestic and international nonrefoulement obligations by not examining the asylum claims of Honduran and Salvadoran asylum seekers before transferring them to Guatemala.¹⁵⁸

US Immigration and Customs Enforcement transferred asylum seekers to Guatemala with little or no regard to whether they might face a risk of persecution there, including based on sexual orientation or gender identity. For Salvadoran or Honduran LGBT people being forcibly transferred to Guatemala, where there was a possibility they would face similar forms of persecution and similar indifference or hostility from Guatemalan authorities as they had suffered in their countries of origin, was a devastating blow.

¹⁵⁴ US Department of State, Press Statement, “Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras,” February 6, 2021, <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras> (accessed March 4, 2021); Government of Guatemala, “Guatemala has been informed of the termination of the Asylum Cooperative Agreements (ACA)” (“*Guatemala fue informada sobre la terminación de Acuerdos Cooperativos de Asilo [ACA]*,” February 5, 2021, <https://pbs.twimg.com/media/Etfh8QyXYAAZHW.jpg> (accessed March 17, 2021))

¹⁵⁵ US Department of State, Overseas Security Advisory Council, “Guatemala 2020 Crime & Safety Report,” March 31, 2020, <https://www.osac.gov/Country/Guatemala/Content/Detail/Report/d8c492ad-b604-457b-bd8f-18550eec1ff2> (accessed September 11, 2020); Refugees International and Human Rights Watch, *Deportation With a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*, May 2020, <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>.

¹⁵⁶ Montoya-Galvez, “Guatemala Suspends Deportation Flights, Pausing Trump Asylum Deal Over Coronavirus,” *CBS News*, <https://www.cbsnews.com/news/guatemala-coronavirus-suspends-deportation-flights-trump-asylum-deal>.

¹⁵⁷ Human Rights Watch email correspondence with a representative of the UN High Commissioner for Refugees, January 15, 2021.

¹⁵⁸ Refugees International and Human Rights Watch, *Deportation With a Layover*.

Human Rights Watch spoke with a lawyer, Linda Corchado, representing a gay Honduran client who was transferred to Guatemala on January 23, 2020, despite telling US immigration authorities he feared for his safety in Guatemala. Josué fled Honduras after being assaulted and receiving death threats for being gay. According to Corchado, after being sent to Guatemala under the ACA, Josué was threatened by men who made homophobic comments. He sustained multiple injuries to his face and body when he fell after the group pursued him on a motorbike. Josué told his attorney he did not feel safe remaining in Guatemala.¹⁵⁹ At the time of writing, he had returned to Mexico—where he was experiencing insecurity because of the presence of armed men who target asylum seekers. He said that he hoped to be able to legally enter the United States again as an asylum seeker.¹⁶⁰

Human Rights Watch asked asylum seekers from Honduras and El Salvador, who had spent time in Guatemala but had gone on to seek asylum in the US, about whether they felt safe in Guatemala and why they did not remain there as an asylum destination. Felicia J., a trans woman from Tegucigalpa, Honduras, said she fled Honduras after gang members threatened her because of her gender identity. She traveled through El Salvador, Guatemala, and Mexico, spending two weeks in Guatemala. When Human Rights Watch interviewed her in Tijuana in 2020 and asked whether she would consider claiming asylum in Guatemala under the ACA, she said:

I can't be in Guatemala, I was already there, it would not be logical, there's a lot of violence and [trans] people can't assimilate. If I were sent back to Guatemala I might as well go back to Honduras, because at least I have family there. In Guatemala, there are no opportunities, it's almost the same as Honduras. The mentality is the same, the violations of human rights, the impunity, if I'm in the street someone can just drive up and shoot me, and if you say that you saw it, you'll be next. This is exactly what we're trying to escape from.¹⁶¹

¹⁵⁹ Human Rights Watch text message correspondence with immigration attorney Linda Corchado, February 5, 2020; Hamed Aleaziz, "Two Gay Immigrants Left Everything For Safety In The US. Instead, They Were Sent To Guatemala," *BuzzFeed News*, February 10, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/gay-immigrants-asylum-guatemala-us-trump> (accessed September 11, 2020).

¹⁶⁰ Human Rights Watch email correspondence with Linda Corchado, August 12, 2020, and January 20, 2021.

¹⁶¹ Human Rights Watch interview with Felicia J. (pseudonym), Tijuana, January 31, 2020.

V. Obligations Under International Human Rights Law

The Inter-American system is among the most developed regional human rights systems when it comes to articulating the basis for rights and protections related to sexual orientation and gender identity, which Guatemala is obligated to uphold.¹⁶² As the Inter-American Commission on Human Rights (the “Commission”) has stated:

[t]he principles of non-discrimination, equality before the law, the right to life and personal integrity are founding principles of the regional and universal human rights system, with legal duties that are of particular importance to lesbian, gay, bisexual, trans, and intersex (hereinafter ‘LGBTI’) persons in the Americas.¹⁶³

The Inter-American Court of Human Rights has ruled that sexual orientation and gender identity are considered protected grounds under Article 1.1 of the American Convention on Human Rights (“the Convention”), which protects all rights recognized within the convention without discrimination on any grounds.¹⁶⁴

Article 4 of the Convention protects the right to life, echoing Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which Guatemala is a state party. Article 5 protects each person’s “physical, mental, and moral integrity” and prohibits torture and cruel, inhuman and degrading punishment or treatment.¹⁶⁵ No one should live with the

¹⁶² American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 22, 1969, ratified by Guatemala on April 27, 1978. <https://www.cidh.oas.org/basicos/merica/basic3.american%20convention.htm>.

¹⁶³ Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, OEA/Ser.L/V/II.170 Doc. 184, December 7, 2018, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf> (accessed September 11, 2020).

¹⁶⁴ Inter-American Court of Human Rights, *Case of Atala Riffo & Daughters v. Chile*, Judgment of February 24, 2012, https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf (accessed September 11, 2020), para 91; see also Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>, pp. 26-28.

¹⁶⁵ American Convention on Human Rights, <https://www.cidh.oas.org/basicos/merica/basic3.american%20convention.htm>, arts. 4, 5; 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, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by El Salvador in 1967, art. 6.

constant threat of violence, and states are obligated under international and regional law to protect the right to security of the person and the right to personal integrity.

The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity address both violence and discrimination against LGBT people. The principles assert that states should take all necessary measures to prevent violence and harassment related to sexual orientation or gender identity, including through vigorous investigation, redress to victims, and awareness-rising campaigns to reduce bias.¹⁶⁶

Obligation to Investigate and Protect against Violence

The Organization of American States (OAS), the main regional governance body in the Western Hemisphere, has recognized member states' obligation to address violence against LGBT people. The OAS General Assembly has issued annual resolutions since 2013 urging member states to produce data on violence based on sexual orientation and gender identity, with a view to fostering public policies to prevent such violence.¹⁶⁷

The Inter-American Commission on Human Rights has specified that states should “make efforts and allocate sufficient resources to collect and analyze disaggregated statistical data in a systematic manner on the prevalence and nature of violence and bias discrimination against LGBTI persons, or those perceived as such.”¹⁶⁸

The Inter-American Court of Human Rights has found that the right to life under Article 4 of the American Convention, in conjunction with Article 1(1), comprises both negative and positive obligations.¹⁶⁹ States must not only ensure that no person be arbitrarily deprived of their life, but must also adopt all appropriate measures to “prevent, try, and punish the

¹⁶⁶ International Commission of Jurists, *The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, March 2007, http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (accessed September 11, 2020), principle 5.

¹⁶⁷ OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, June 6, 2013, http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf (accessed September 11, 2020).

¹⁶⁸ Inter-American Commission on Human Rights, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, <http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf>.

¹⁶⁹ Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf (accessed September 11, 2020), para. 153.

deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents.”¹⁷⁰

As such, the court held that safeguarding the right to life requires:

States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.¹⁷¹

The commission has further emphasized that “any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international law, to actions or omissions by any public authority constitutes an act attributable to the State.”¹⁷²

The UN Human Rights Committee, in overseeing states’ compliance with the ICCPR, emphasizes that states’ positive obligations:

...will only be fully discharged if individuals are protected by the State, not just against violations of ... rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights in so far as they are amenable to application between private persons or entities.¹⁷³

The UN Office of the High Commissioner for Human Rights notes that although hate-motivated violence against LGBT people is typically perpetrated by non-state actors,

¹⁷⁰ Ibid.

¹⁷¹ Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf, para. 156.

¹⁷² Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, https://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm#_ftnref21 (accessed September 11, 2020), para 39.

¹⁷³ UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), <https://www.refworld.org/docid/478b26ae2.html> (accessed January 25, 2021), para. 8.

“failure by State authorities to investigate and punish this kind of violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person.”¹⁷⁴ Under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, states party are obligated to adopt measures to combat violence against women.¹⁷⁵ The Inter-American Commission on Human Rights has interpreted the Belém do Pará convention, which defines “violence against women” as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women” as applicable to transgender women.¹⁷⁶

The Inter-American Court of Human Rights has ruled that in investigating and prosecuting cases of violence, judicial processes should be attentive to the specific vulnerabilities of LGBT people. In March 2020, in *Azul Rojas Marín y Otra vs. Perú*, a case involving sexual violence and other forms of torture of a trans woman in prison, the Court held that when investigating violent acts, state authorities “have a duty to take all reasonable measures to uncover whether there are possible discriminatory grounds.” No facts can be omitted from this investigation if they can lead to establishing that the violence was motivated by discrimination; failure to investigate possibly discriminatory motives could be a violation of the non-discrimination provision in Article 1(1) of the American Convention.¹⁷⁷

In its determination, the court ordered Peru to establish a specific protocol for investigation and administration of justice in cases involving allegations of violence against LGBTI people. Such a protocol should include, the court ruled, the obligation to be sensitive to victims’ gender identity and sexual orientation, not engage in stereotyping or other discriminatory treatment, avoid retraumatization, and stipulate methods to

¹⁷⁴ UN Office of the High Commissioner, “Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law,” October 2012, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (accessed September 11, 2020), p. 14.

¹⁷⁵ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), adopted June 9, 1994, entered into force March 9, 1995, <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> (accessed September 16, 2020), arts. 7-8. El Salvador ratified the treaty in 1995.

¹⁷⁶ Inter-American Commission on Human Rights, Report on Merits, Vicky Hernández and Family, Honduras, OEA/Ser.L/V/II.170 Doc. 179, Report No. 157/18, Case 13.051, December 7, 2018, <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf> (accessed September 11, 2020), paras. 80, 98.

¹⁷⁷ Inter-American Court of Human Rights, *Case of Azul Rojas Marín et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of March 12, 2020, https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf (accessed September 11, 2020), para. 196.

determine whether crimes of sexual violence or torture were perpetrated due to anti-LGBTI animus.¹⁷⁸

Protection from Discrimination

Regional and international human rights law are equally firm in their condemnation of all forms of discrimination against LGBT people. The OAS General Assembly resolution cited above, in addition to calling for data collection with regard to violence, calls on member states to adopt public policies against discrimination by reason of sexual orientation and gender identity or expression.¹⁷⁹ The Yogyakarta Principles also call on states to ensure all human rights without discrimination on the basis of sexual orientation or gender identity, including the right to work and to education.¹⁸⁰

In February 2020, the Inter-American Convention Against All Forms of Discrimination and Intolerance entered into force. It explicitly protects against discrimination on the grounds of gender identity, gender expression and sexual orientation alongside other grounds including language, cultural identity, migrant or refugee status, and socioeconomic status. It has been signed by 12 countries and ratified by Mexico and Uruguay. Guatemala is among the countries that have neither signed nor yet ratified the convention.¹⁸¹

As noted by the UN Human Rights Committee, the term “discrimination” should be understood broadly, “to imply any distinction, exclusion, restriction or preference... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”¹⁸² Regardless of intent, policies and practices that result in disparate impacts on particular groups of people—

¹⁷⁸ Ibid., paras. 241-244; “Groundbreaking Ruling: Inter-American Court Finds Peru Responsible for Discriminatory Torture Against an LGBTI Person and Orders the State to Combat Discrimination,” Redress news release, April 7, 2020, <https://redress.org/news/groundbreaking-ruling-inter-american-court-finds-peru-responsible-for-discriminatory-torture-against-an-lgbti-person-and-orders-the-state-to-combat-discrimination> (accessed September 11, 2020).

¹⁷⁹ OAS, General Assembly, Human Rights, Sexual Orientation, and Sexual Orientation and Gender Identity and Expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary meeting, http://www.oas.org/en/iachr/lgtbi/docs/AG-RES_2807_XLIII-O-13.pdf, art. 2.

¹⁸⁰ Yogyakarta Principles, principles 12, 16.

¹⁸¹ Inter-American Convention Against All Forms of Discrimination and Intolerance, adopted June 5, 2013, entered into force February 20, 2020, http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp (accessed September 11, 2020).

¹⁸² UN Human Rights Committee, CCPR General Comment No. 18, Non-Discrimination, November 10, 1989, <https://www.refworld.org/docid/453883fa8.html> (accessed September 11, 2020), para. 7.

including LGBT people—can constitute discrimination that states are obligated to eliminate. The UN Committee on Economic, Social and Cultural Rights, the authoritative body that interprets the UN Convention on Economic, Social and Cultural Rights, has also stressed that states are obligated to eliminate not only formal, but also de facto or substantive, discrimination, noting:

Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination... In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.¹⁸³

Accordingly, to effectively curtail systemic discrimination, it is critical that states prioritize adopting comprehensive civil and administrative laws banning discrimination. While the use of the criminal law is warranted when discrimination manifests itself in particular egregious forms—notably, acts of violence or incitement to violence—its focus on criminal intent, which needs to be established beyond a reasonable doubt, is inadequate to capture and sanction much discriminatory behavior. This is particularly true when discrimination is widespread as part of policies and practices. By contrast, civil and administrative legal frameworks are better designed than the criminal law to give greater weight to the consequences of particular actions, and can help address and sanction harmful actions and practices that impact groups or large numbers of people in a way that promotes good systems and policies.

States are also obligated to adopt robust economic and social policies in various areas—education, health, and employment, among others—to counter societal discrimination and

¹⁸³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, E/C.12/GC/20, <https://www.refworld.org/docid/4a60961f2.html> (accessed September 11, 2020).

its harmful effects, and affirmatively ensure the equal rights of vulnerable groups, such as LGBT people in Guatemala.

Legal Gender Recognition

In November 2017, the Inter-American Court of Human Rights issued an advisory opinion, in response to a query from Costa Rica about its obligations under the American Convention, stating that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression, states must establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements such as medical or psychiatric evaluation or divorce.¹⁸⁴ The Yogyakarta Principles also urge states to ensure that procedures exist whereby a person's self-defined gender identity can be indicated on all state-issued identity documents that include gender markers.¹⁸⁵ To date, Guatemala has provided no path to legal gender recognition for transgender people.

¹⁸⁴ Inter-American Court of Human Rights, Advisory Opinion OC-24/17, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf, pp. 43-72.

¹⁸⁵ Yogyakarta Principles, principle 3.

VI. Acknowledgments

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