

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

16 September 2011

### MEX103804.E

Mexico: Treatment of sexual minorities, including legislation protecting sexual minorities, other state protection, recourse and services available; treatment of sexual minorities in the Federal District; information on the Zona Rosa Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### Treatment of Sexual Minorities

##### Discrimination

Sources indicate that homophobia is prevalent in Mexico (*Adiario* 4 Jan. 2010; The Canadian Press 13 May 2010; *CronicaDigital* 4 Aug. 2011; Mexico n.d.a; *El Sol de México* 18 July 2009; *El Universal* 6 June 2010; *ibid.* 21 Feb. 2011). According to the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH), discrimination and violence based on a person's sexual orientation or gender identity are considered to be [translation] "socially acceptable" (*La Prensa* 3 Jan. 2011). A study conducted by both Letra S, a non-governmental organization (NGO) that disseminates information about sexual minorities (Letra S. n.d), and the Faculty of Political and Social Science at the National Autonomous University of Mexico (Universidad Nacional Autónoma de México, UNAM), states that [translation] "3 out of every 4 homosexuals have suffered some type of discrimination" (*Adiario* 4 Jan. 2010). *La Prensa* reports that the largest number of homophobic incidents take place in public, followed by prisons, homes, and the work place (3 Jan. 2011).

Media, government and non-government sources indicate that sexual minorities face employment discrimination (Global Rights et al. Mar. 2010, 6; Mexico Dec. 2008, 134; *El Sol de México* 18 July 2009; Article 19 19 June 2009) in both the private and public sector (Global Rights et al. Mar. 2010, 4). Sources also point out that discrimination against sexual minorities happens in schools (*La Prensa* 3 Jan. 2011; *La Jornada de Oriente* 18 May 2011; Mexico 17 May 2010, 4; Global Rights et al. Mar. 2010, 8).

#### Complaints to the National Council for the Prevention of Discrimination

In correspondence with the Research Directorate, a representative of the National Council for the Prevention of Discrimination (Consejo Nacional para Prevenir la Discriminación, CONAPRED) stated that, of the complaints about discrimination against sexual minorities that the organization receives, the most common allege:

[translation]

- the denial of services or access to places that provide services to the public (e.g., sexual minorities are frequently not allowed to enter or stay in business establishments);
- violence, such as being assaulted by family members, neighbours or others;
- victims of ridicule and hate and incitement to treatment contrary to their dignity in communications issued by the media or in statements by people such as religious figures, business entrepreneurs, associations, political parties, and others; and
- the denial of access to and maintenance of employment. (Mexico 12 Aug. 2011)

The representative also stated that the most common complaints that sexual minorities make against federal public servants allege that they discriminated against them by denying public health services, access to employment and maintenance of employment, and social security (*ibid.*).

According to *El Universal*, CONAPRED received 39 complaints of alleged discrimination in 2009, and 166 in 2010; [translation] "[a]bout 60 percent of the cases were resolved by conciliation between the parties" (21 Feb. 2011). The Mexico City-based newspaper also states that in 2010, CONAPRED forwarded 53 complaint files to the Public Ministry, which found them to be crimes of discrimination (ibid.).

## Violence

A 2010 National Human Rights Commission report concludes that human rights violations and crimes based on sexual orientation or gender identity [translation] "are not isolated" events as there is a "serious structural problem of intolerance" within Mexican society (*La Prensa* 3 Jan. 2011; *El Universal* 21 Feb. 2011). According to the Oaxaca-based regional newspaper *Adiario*, the joint Letra S and UNAM Faculty of Political and Social Science study indicates that 76.4 percent of homosexuals have been subjected to physical violence and that 53.3 percent of that violence occurred in public places (*Adiario* 4 Jan. 2010). A shadow report on violations of the rights of lesbian, gay, bisexual and transgender (LGBT) people in Mexico by the international and national human rights organizations Global Rights, the International Gay and Lesbian Human Rights Commission, the International Human Rights Clinic at Harvard Law School and Colectivo Binni Laanu A.C., in Mexico, which was submitted to the United Nations (UN) Human Rights Committee, maintains that LGBT persons "face a serious threat of violence" (Mar. 2010, 4).

According to Article 19, an organization that works to defend freedom of expression and information (Article 19 n.d.a) from its headquarters in London, England, and several regional offices around the world, including in Mexico City (ibid. n.d.b), Latin America and the Caribbean have the highest number of homophobic killings world-wide, while Mexico ranks second highest (Article 19 27 Oct. 2008). A Letra S report on homophobic hate crimes, compiled with statistics from a review of 71 local and national print newspapers in Mexico City and other cities that reported cases of homicides against homosexual men, lesbians and transgendered persons (Letra S Dec. 2009, 5), was released at the CONAPRED office in May 2010 (*La Jornada* 14 May 2010). The report states that [translation] "between January 1995 and June 2009, the press reported 640 homophobic homicides in 11 states, a figure that could be increased to 1,656 if there was national reporting" (*La Jornada* 14 May 2010). Records kept by the Citizens' Commission Against Homophobic Hate Crimes (la Comisión Ciudadana contra Crímenes de Odio por Homofobia) also show that between 1995 and 2009 there were 640 registered homophobic homicides (NOTIMEX 17 May 2010).

The Letra S report also indicates that of the 86 homophobic hate crimes in which newspapers listed the age of the victims, 55 of the victims were between the ages of 21 and 40 (Letra S Dec. 2009, 5). The report states that most of the victims were killed by sharp weapons, followed by asphyxia, beating, the use of fire arms, and [translation] "other means" (ibid.). According to The Canadian Press, which wrote on the report's release in May 2010, the report shows that homicides of gays and lesbians has increased: between 1995 and 2000, there were nearly 30 homicides a year, while between 2001 and 2009, the number rose to approximately 60 homicides a year (13 May 2010). The Director of Letra S attributes the rise in violence to more people "becom[ing] public about their sexual orientation" (The Canadian Press 13 May 2010).

## Incidences of violence in states and cities

According to NotieSe, a news agency specializing in health, sexuality and HIV/AIDS (NotieSe n.d.), the state of Guerrero, with 22 registered murders, is the entity with the highest number of homophobic hate crimes so far in 2011 (13 July 2011). In 2010, according to a National Human Rights Commission special report, the Federal District reported the highest number at 317 cases, the second highest rate of homophobic crimes and assaults took place in Guanajuato with 47, of which 33 were homicides, followed by Veracruz with 40 cases (Mexico 2010, 10). The Letra S report on homophobic hate crimes indicates that, between 1995 and 2008, the federal entity with the second most homophobic crimes in Mexico was Michoacán, followed by the states of Mexico, Nuevo León, and Jalisco (Letra S Dec. 2009, 16).

The co-authored shadow report to the UN says that, in 2009, 15 individuals belonging to sexual minority groups were murdered with impunity in Guerrero state and that "in the first eight months of 2009, around 40 homosexual persons were murdered in Michoacán. The majority of these deaths were concentrated in the Tierra Caliente area" (Global Rights et al. Mar. 2010, 9). It also provides reports of the homicides of homosexual and trans-identified individuals in several other states, such as Aguascalientes, Puebla and Querétaro and the town of Juchitán, in 2009 (ibid., 9-10). According to *El Universal*, over the last 10 years in Monterrey and its metropolitan area, there have been 59 reports of homosexual homicides made to local authorities (6 June 2010). A spokesperson for the gay community cited by the newspaper said that the number of documented murders is [translation] "very low" and that the number homophobic crimes in Monterrey is actually significantly higher (*El Universal* 6 June 2010). *El Universal* also reports that the leader of a lesbian and gay community called Pride Veracruzano (Orgullo Veracruzano) claims that there are 150 homophobic-related killings a year in Veracruz (25 Aug. 2010).

## Violence against human rights defenders and gay activists

According to a submission by the National Network of Human Rights Civil Organizations "All Rights for All" (Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos") to the UN Human

Rights Committee, human rights defenders that work on sexual-diversity issues are often the "object of threats, aggressions, murder, politically motivated criminal charges and imprisonment for organizing protests or events promoting respect for human rights" (Red Nacional Mar. 2010, para. 174). Amnesty International (AI) reports that an LGBT activist in Guerrero who organized the annual gay pride parade in Chilpancingo and who had received death threats was killed on 4 May 2011 (AI 12 May 2011).

## Legislation

Mexico's Federal Law to Prevent and Eliminate Discrimination (*Ley Federal para Prevenir y Eliminar la Discriminación*), originally published on 11 June 2003 and amended on 27 November 2007, includes sexual preference as grounds for protection against discrimination (Mexico 2003, Art. 4, 8). However, gender identity is not included in anti-discrimination legislation (Mexico Dec. 2008, 134). The law defines discrimination as follows:

[Translation]

[A]ny distinction, exclusion or restriction based on ethnic or national origin, sex, age, disability, social or economic status, health, pregnancy, language, religion, opinion, sexual preference, civil status or any other consideration that would impede or void the recognition or exercise of rights and the real equality of opportunities for persons. (Mexico 2003, Art. 4)

Article 9 of the Federal Law to Prevent and Eliminate Discrimination, which is attached to this Response, also lists the forms of conduct considered discriminatory (*ibid.*).

According to the co-authored shadow report, Mexico does not have a federal hate crimes statute, but the Federal District has hate crimes legislation (Global Rights et al. Mar. 2010, 9).

Sixteen states have adopted state laws about discrimination since the Federal Law to Prevent and Eliminate Discrimination was approved, and thirteen states have criminalized discrimination as a penal crime (Mexico n.d.a.; *El Universal* 21 Feb. 2011).

## State Protection, Recourse and Services Available

### Federal District Human Rights Commission

The Federal District Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF) is mandated to investigate complaints and reports of local authorities who violate human rights in the Federal District (Federal District 28 July 2011). According to the comments made by the CDHDF's Fourth General Investigator during a telephone interview by the Research Directorate, there are two types of complaints of discrimination based on sexual orientation that it investigates: discrimination in jails; and discrimination in the workforce, in government institutions, in accessing health-care services, and in the judicial system (*ibid.*). The Investigator added that all of the complaints that are in CDHDF's jurisdiction are documented and investigated, and that when there are structural problems of discrimination, the CDHDF tries to find general solutions, independent of solutions for that particular case (*ibid.*). As an example, the Investigator told the story of a transsexual woman who was prohibited from entering a metro car that was assigned specifically to women, children, the disabled and elderly persons (*ibid.*). The Investigator indicated that the CDHDF took steps to ensure that all transsexual women are now allowed to use these designated metro cars (*ibid.*).

The Investigator said that when an individual needs protection, the CDHDF requests the intervention of the Federal District's Ministry of Public Security (Secretaría de Seguridad Pública del Distrito Federal) and/or the Office of the Attorney General of the Federal District (Procuraduría General de Justicia del Distrito Federal) (Federal District 28 July 2011). The Attorney General has established distinct mechanisms for protecting individuals, which depend on the context and the type of protection needed (*ibid.*).

Complaints that are not related to violations committed by local authorities are forwarded to either the Attorney General of Justice of the Federal District or CONAPRED (*ibid.*). If they are crimes, they are sent to the Attorney General; if they are not crimes, they are sent to CONAPRED (*ibid.*).

### National Council for the Prevention of Discrimination

CONAPRED was created in 2003 through the Federal Law to Prevent and Eliminate Discrimination and is mandated to [translation] "receive and resolve claims and complaints of discriminatory acts committed by individuals or federal authorities" (Mexico n.d.). CONAPRED also [translation] "develops actions to protect all citizens from discrimination or exclusion" (*ibid.*). Although CONAPRED offices are only located in Mexico City, a CONAPRED representative stated that the organization works at a national level (*ibid.* 12 Aug. 2011). The representative also stated that CONAPRED processes both complaints against individuals and claims against federal public servants (*ibid.*). If an individual begins a complaint or claim process in one part of the country, and then moves to another region, the process can continue providing CONAPRED receives the person's updated contact information since they

could be required to participate in various stages of the procedure or to provide factual information (ibid.). Individuals who wish to submit a complaint or claim can do so either online, over the telephone, by e-mail, in writing or in person at an office in the Federal District (ibid.).

The CONAPRED representative stated that the process followed when someone presents a complaint or claim varies substantially: complaints usually include inviting the person that has committed the discriminatory act to mediation, during which the two parties can sign a settlement agreement and determine appropriate administrative measures, such as courses or seminars (Mexico 12 Aug. 2011). If the parties do not agree to mediation, the person who submitted the complaint will be referred to the appropriate judicial or administrative entities (ibid. 2003, Art. 81). In the case of a claim, the authorities responsible are asked to submit a report of their version of the story, which is then evaluated alongside the version submitted by the claimant (ibid. 12 Aug. 2011). Both sides are asked for written or oral evidence of the incident (ibid.). The parties may then go through a process of mediation or investigation (ibid.).

According to the CONAPRED representative, the protection CONAPRED offers consists of processing complaints and claims, and providing counselling and guidance when requested (ibid.). CONAPRED also has an Intergovernmental Group of Sexual Diversity (Grupo Intragubernamental de Diversidad Sexual), which meets approximately once a month and provides information on human rights, training and sensitization to government officials under their jurisdiction (ibid.).

### Other government bodies

The CONAPRED representative stated that other government agencies that work to protect sexual minorities include the national and state human rights commissions, which accept complaints about public servants who commit human rights violations against sexual minorities; and agents of the Public Ministry, which accept complaints and initiate investigations of crimes committed against sexual minorities (ibid.).

### Treatment of Sexual Minorities by Police

According to *El Universal*, a study conducted by the Metropolitan Autonomous University (Universidad Autónoma Metropolitana) indicates that 20 percent of homosexuals have been harassed by Mexico's security forces and 30 per cent have faced discrimination by police (*El Universal* 23 Dec. 2009). *El Universal* indicates that on 6 June 2010, in Monterrey, 300 people protested the homophobic actions of the Monterrey municipal police (ibid. 6 June 2010). Amnesty International reports that in December 2010, an LGBT activist in the city of Mérida was handcuffed and blindfolded by Yucatán state judicial police who "repeatedly beat him in the face, chest, and back," and "questioned him using homophobic language" (AI 8 Dec. 2010). Amnesty International indicates that the police officers told the victim not to report the incident or they would catch him again and incarcerate him (ibid.). According to the organization, the victim

filed a complaint with the state Attorney General's Office on 5 December but to date nobody has contacted him regarding any investigation into the incident or protection measures. The state judicial police work under the authority of the state Attorney General. (ibid.)

The co-authored shadow report states that trans-identified individuals face "mass detentions, extortion, and physical abuse at the hands of police and military officials" (Mar. 2010, 4). The report includes examples of authorities assaulting and arresting trans individuals and threatening them with rape and death if they make complaints (Global Rights et al. Mar. 2010, 10-12). According to NotieSe, municipal and state authorities have extorted transgendered individuals in Chihuahua, detaining them for looking homosexual and reportedly asking them for sex before allowing them to leave (6 July 2011).

The co-authored report says the laws throughout Mexico criminalize acts such as "obscene exhibitions" and "acting in such a way as to offend one or more persons" (Global Rights et al. Mar. 2010, 12). The report adds that Mexico's laws are vague and that, as a result, "they are frequently used by police officials to harass, detain, and extort" people based on their gender identity (ibid.).

According to the National Human Rights Commission, the following state authorities are most likely to be responsible for violating the human rights of sexual minorities:

1. [Translation] "Members of security bodies, particularly state and municipal." This is often evident in "arbitrary detentions, injuries, threats, theft, extortion, breaking and entering, and excessive use of law enforcement."
2. Prison authorities, including abuse by custodial staff and other inmates and poor medical care.
3. Public Ministry agencies, including through repressive treatment, discrimination, and by not investigating crimes.
4. School authorities, by committing discriminatory acts against students and teachers (Mexico 2010, 10-11).

## Impunity

Sources indicate that impunity of crimes against sexual minorities is prevalent (Mexico *n.d.a.*, 7; Red Nacional *Mar.* 2010; *La Prensa* 3 *Jan.* 2011; Universogay.com 23 *Apr.* 2011). According to news source *La Quinta Columna*, three homosexuals were killed in Puebla in April 2011, and five have been killed since the beginning of 2011 (3 *May* 2011). The police reportedly have not made any progress in their investigations of the murders (*La Quinta Columna* 3 *May* 2011). According to Universogay.com, 19 homicides of homosexuals have occurred in the city of Chihuahua in the first four months of 2011, and the perpetrators have not been detained by the police (23 *Apr.* 2011). The National Network of Human Rights Civil Organizations reported that in 2010, local authorities had not yet started investigating the 2005 murder of a human rights, sexual diversity and HIV/AIDS activist working in Puebla and Mexico City (Red Nacional *Mar.* 2010, *para.* 175).

Several sources consulted by the Research Directorate indicate that homicides against sexual minorities are often dismissed as "crimes of passion" (*CronicaDigital* 4 *Aug.* 2011; EFE 25 *July* 2011; Global Rights *et al.* *Mar.* 2010, 9; *La Jornada de Oriente* 18 *May* 2011; *Reforma* 28 *July* 2011). *La Jornada de Oriente* reports that, according to a representative of the Puebla Pride Committee (Comité Orgullo Puebla), 10 homophobic hate crimes have remained unpunished since 2005 (18 *May* 2011). The representative said that eight of the victims were tortured, either by strangling, sharp weapons, gun shots to the head and face or skull, and found naked (*La Jornada de Oriente* 18 *May* 2011). The representative also states that families often do not continue investigations for fear of facing discrimination and because authorities usually determine such cases to be crimes of passion (*ibid.*). NotieSe reports that in Guerrero, protestors called on the public to condemn the state government for its handling of homophobic crimes and demanded that these crimes be investigated without prejudice (13 *July* 2011).

## Treatment of Sexual Minorities in the Federal District

In Mexico City, amendments to the Federal District Civil Code (*Código civil para el Distrito Federal*) and Code of Civil Procedure (*Código de procedimientos civiles para el Distrito Federal*) permitting same-sex marriage were published in the Official Gazette of the Federal District on 29 December 2009 (Federal District 2009). The amendments became effective on 4 March 2010 (EFE 5 *Jan.* 2011; BBC 4 *Mar.* 2010). For more information on the Supreme Court rulings regarding same-sex marriage, its implementation, and societal attitudes, see Response to Information Request MEX103798.E.

According to the Letra S report on homophobic hate crimes, between 1995 and 2008, the majority of such crimes took place in the Federal District (Letra S *Dec.* 2009, 5). The report notes that in those years, 143 homophobic homicides occurred in the Federal District, of which 109 were committed against men, 29 against transvestites, transsexuals and transgendered persons, and 5 against women (*ibid.*). As recently as 23 *July* 2011, a 25-year-old gay rights activist and member of the Sexual Diversity Coordinating Committee (Coordinadora para la Diversidad Sexual) for the Democratic Revolution Party (Partido de la Revolución Democrática, PRD) was killed in his home (Mexico 24 *July* 2011) in Mexico City with "brutal wounds" (EFE 25 *July* 2011).

As already mentioned, the CDHDF is mandated to investigate complaints against local authorities in the Federal District (Federal District 28 *July* 2011). The CDHDF Fourth General Investigator provided the Research Directorate with the following year-by-year number of formal complaints it received about violence against sexual minorities in the Federal District (the statistics start in 2006, the year the CDHDF began registering human rights violations against sexual minorities) (Federal District 28 *July* 2011): 10 in 2006, 40 in 2007, 33 in 2008, 34 in 2009, and 49 in 2010 (*ibid.*). The Investigator indicated that these numbers represent only the formal complaints the organization received; not all cases are reported since people still face other obstacles and discrimination based on their sexual orientation (*ibid.*). According to co-authored shadow report, "11% of LGBT in Mexico City had been a victim of threats, extortion, or detention by police because of their sexual orientation" (Global Rights *et. al* *Mar.* 2010, 11).

*El Universal* reports the coordinator of NotieSe as saying that sexual minorities often do not report discrimination because of the treatment they receive from staff in the public ministries, including humiliation (*El Universal* 21 *Feb.* 2011). The NotieSe coordinator demonstrated his point by relating the story of a college student who was beaten by his peers and, when he reported it to the Public Ministry, was told: [translation] "'They hit you? Well, of course, for being a fag'" (*ibid.*). Corroborating information could not be found by the Research Directorate within the time constraints of this Response.

## Zona Rosa

Zona Rosa is a financial and commercial district in Mexico City (Mexico City Guide 12 *July* 2011) that spans a 29-square block area (Fodor's Travel *n.d.*). The Zona Rosa is considered "a hub for the homosexual community" (AFP 28 *July* 2010). Since the neighbourhood began to decline in the 1980s, a large number of businesses were opened by the gay community (Mexico City Guide 12 *July* 2011).

According to Mexican news agency NOTIMEX, the head of a local Ministry of Tourism office (Secretaría de Turismo) stated that corruption, prostitution, the distribution of drugs, and illegal businesses are proliferating in the Zona Rosa (3 *July* 2011). NOTIMEX also reports that on March 14, 2010, a homosexual couple was attacked and

threatened in Zona Rosa by four people who were allegedly members of an organization called [translation] "Citizen's Justice" (Justicia ciudadana) (31 [Mar.](#) 2010).

The Fourth General Investigator explained that there had been complaints of police extortion and police [translation] "bothering" sexual minorities in the Zona Rosa (Federal District 28 July 2011). But in recent years the Ministry of Public Security (Secretaria de Seguridad Pública) has implemented police training and complaints about police violence in the Zona Rosa have been [translation] "erradicated" (ibid.). However, according to Agence France-Press (AFP), a member of the gay community in Zona Rosa said that "'[o]ne of the most important things is training for justice officials'" who do not know "how to respond to attacks on gay people" (28 July 2010).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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**Oral sources:** Attempts to contact representatives of the Comité Lesbico Gay de Occidente A.C., Comunidad Transgenero SC, Frente para las Garantías Humanas en Tijuana, Grupo Lésbico Universitario, and Letra S were unsuccessful within the time constraints of this Response.

**Internet sites, including:** European Country of Origin Information Network, Human Rights Watch, International Gay and Lesbian Human Rights Commission, International Lesbian and Gay Association, United States Department of State.

## Attachment

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