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16 July 2014

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El Salvador: Situation of sexual minorities, including treatment by society and authorities; support services and state protection, including implementation of anti-discrimination legislation (2012-June 2014)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation

According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), male-to-male and female-to-female relationships are legal in El Salvador, and there is no punishment for homosexual relationships (n.d.).

On 12 May 2010, the Presidency of El Salvador issued Decree No. 56 (*Decreto No. 56*), which prohibits discrimination in the public administration on grounds of gender identity and sexual orientation (El Salvador 2010). The Decree states the following:

[translation]

Art. 1.- All forms of discrimination on grounds of gender identity and/or sexual orientation are prohibited in the activities of the public administration.

Art. 2.- For purposes of this Decree, the institutions and other bodies that make up the public administration are prohibited from:

a) engaging in any act or practice that directly or indirectly constitutes a form of discrimination on grounds of gender identity and/or sexual orientation; and, b) fostering, encouraging, defending or supporting any act or practice that directly or indirectly promotes the non-acceptance of a specific person or groups of persons, and that incites discrimination or the practice of hostile actions against such persons on grounds of gender identity and/or sexual orientation.

Art. 3.- The heads of the various agencies and bodies that make up the public administration must carry out an exhaustive review of the policies, programs and projects that pertain to them, and adopt or propose the corrective actions required if, in the design or practical implementation of the same, there are actions or practices that directly or indirectly constitute or that could generate any form of discrimination on grounds of gender identity and/or sexual orientation.

One of the criteria they shall use to evaluate the performance of their personnel will be adherence to the provisions of this Decree.

Art. 4.- The heads of the various agencies and bodies that make up the public administration must ensure the creation of a culture of respect and tolerance within the activities carried out by such agencies and bodies, regardless of the gender identity and/or sexual orientation of a person. (ibid.)

According to sources, the Decree is not applicable to the private sector (*El Diario de Hoy* 13 May 2010; *El Salvador* 2012, 3). Sources indicate that the LGBT community has demanded that *Decree No. 56* be converted into a law (AFP and *El Faro* 30 June 2013; *El Salvador* 1 July 2013) to make it applicable throughout the country, in both the public and private sectors (*ibid.*).

Media sources report that in April 2009, the Legislative Assembly of El Salvador approved, during the last plenary session of the 2006-2009 legislature, a reform of Articles 32, 33 and 34 of the Constitution to ban same-sex marriages and adoption of minors by same-sex couples, the second step of the process being the ratification of the proposed reform by the following Legislative Assembly [after the elections] (*La Prensa Gráfica* 29 Apr. 2009; *Diario Co Latino* 30 Apr. 2009). On 19 April 2012, the Legislative Assembly voted again in favor of a proposition to reform Articles 32, 33 and 34 to ban same-sex marriages and adoption of minors by same-sex couples (*La Página* 19 Apr. 2012; *El Salvador* n.d.c). On 28 January 2014, the ratification of the reform received 19 votes, which is less than the required 56 votes (*ibid.* n.d.b). On 13 June 2014, the Legislative Assembly voted to close the file on the constitutional reform of Articles 32, 33 and 34, because it did not have the two thirds of the votes necessary for its ratification (*ibid.* n.d.a). *Elsalvadorg.com*, a news website for sexual minorities in El Salvador (*Elsalvadorg.com* n.d.a), reports that, according to a university law student who is also a transsexual, [translation] "some" universities and educational institutions are using in their classes an erroneous version of the Constitution that includes the ban on same-sex marriages in Articles 32, 33 and 34 (*ibid.* 3 Mar. 2014). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Treatment by Society and Authorities

According to *Diario Co Latino*, a San Salvador-based newspaper, the Secretary for Social Inclusion and First Lady, Vanda Pignato, said during the launch of a call center for LGBTI persons in May 2013 that the vulnerability of sexual minorities, which represent [translation] "more than" 12 percent of the Salvadoran population, had sparked a rise in illiteracy and poverty among that sector of the population (18 May 2013). During the same event, according to the San Salvador-based news website *La Página*, Pignato asserted that sexual minorities in El Salvador face discrimination, prejudice, and acts of violence (19 May 2013). The Inter-American Commission on Human Rights of the Organization of American States (OAS) stated in a press release dated 8 November 2013 that in El Salvador, the transgender community is [translation] "constantly harassed," and is subject to "high levels of violence, killings, and attacks." The Human Rights Campaign (HRC), who describes itself as "the largest civil rights organization working to achieve equality for lesbian, gay, bisexual and transgender Americans" (HRC n.d.), asserts that, even though violence affects most communities in El Salvador, LGBT people are one of the most "vulnerable" populations (30 Oct. 2013).

According to Nicolás Rodríguez, executive director of *Elsalvadorg.com* (*Elsalvadorg.com* n.d.a), even though there are improvements regarding the advancement of LGBT rights in the country, there needs to be better access to education, health care, employment, and security (*La Página* 27 Nov. 2013). The US Department of State's *Country Reports on Human Rights Practices for 2013* for El Salvador indicates that "[w]idespread official and societal discrimination based on sexual orientation occurred in employment and access to health care and identity documents" (US 21 Mar. 2014, 21). A report on human development in El Salvador in 2013 produced by the UN Development Programme (UNDP) states that [translation] "many" transgender persons consider their right to work to be the most violated among the population, as institutions and companies deny them job positions for being transgender (UN 2013, 199). The report further indicates that, according to a testimony, [translation] "'many transgender people who have higher education degrees are not given jobs in their field,'" and are relegated to jobs such as hairdressers or make-up artists and, when they are offered a job, are asked to "curb the expression of their identity" (*ibid.*). The El Salvadoran news website *ContraPunto* cites the director of *Asociación Entre Amigos*, an NGO that advances the rights of LGBTI persons as well as people with HIV/AIDS in El Salvador (*Asociación Entre Amigos* n.d.), as saying that LGBT persons, including those with higher education, are discriminated against in employment, and their labour rights are violated by union representatives and employers alike (*ContraPunto* 1 May 2013). He also indicated that LGBT persons are forced to work double shifts or do additional work without further compensation (*ibid.*). According to the UNDP, the exclusion from educational institutions and the lack of job opportunities for LGBT persons in El Salvador [translation] "expose them to precarious conditions in the informal job market or to sex trade" (UN 17 May 2014).

Diario Co Latino cites the director of *Asociación Entre Amigos* as saying that access to health care services for the LGBTI population is [translation] "limited" (18 May 2013). A 2012 national survey on the situation of LGBT persons in El Salvador, produced by the Directorate for Sexual Diversity (*Dirección de Diversidad Sexual*) of the Office of the Secretary for Social Inclusion (*Secretaría de Inclusión Social*) with the participation of 400 LGBT persons, indicates that 45.6 percent of them have been discriminated against or assaulted in educational institutions, mostly by other students (70.7 percent) and teachers (31.1 percent) (*El Salvador* 2012, 9, 34-35). The survey further indicates that 26.8 percent of respondents have been discriminated against or assaulted in health care facilities because of their sexual orientation or gender

identity: 46.5 percent by doctors and 25.7 percent by nurses (ibid., 35-36). Regarding employment, the survey indicates that 39.1 percent of respondents have been denied employment due to their sexual orientation or gender identity (ibid., 37).

Country Reports 2013 indicates that "public officials, including police, engaged in violence and discrimination against sexual minorities," according to NGOs (US 21 Mar. 2014, 21). The UNDP report on human development in El Salvador indicates that obtaining the official identity document (Documento Único de Identidad, DUI) can be a challenge for LGBT persons, because the gender associated with the legal name does not [translation] "coincide" with the physical appearance (UN 2013, 199). Authorities ridiculed them and exerted pressure over them to [translation] "abide by the rules" (ibid.). *Country Reports 2013* further indicates that government agencies "ridiculed [LGBT persons] when they applied for identification cards or reported cases of violence against [them]" (US 21 Mar. 2014, 21).

On 5 May 2013, a transgender person called "Tania" was found dead inside a plastic bag, with signs of assault (*Diario Co Latino* 18 May 2013). She worked for the Organization for Trans Women Living with HIV (Organización de Mujeres Trans Viviendo con VIH, Comcavis), and according to the Comcavis director, "Tania" had received threats before her homicide (ibid.). In addition to the case of "Tania," ContraPunto reports the killing of a transgender minor in San Luis La Herradura, two transgender persons in San Marcos and San Luis Talpa, and a gay man in El Espino (17 May 2013). The article indicates that none of these crimes have been solved by the police (ibid.). *Country Reports 2013* indicates that the Attorney General's Office for Human Rights (Procuraduría para la Defensa de los Derechos Humanos, PDDH) has investigated, as of 20 September 2013, "nine cases of possible human rights violations committed against LGBT persons, two of which involved abuses committed by the PNC [National Civilian Police (Policía Nacional Civil)] and two others by municipal police" (US 21 Mar. 2014, 21). An article jointly produced by *El Mundo*, a San Salvador-based newspaper, and Agencia EFE, a news agency, cites the organizer of a march for sexual diversity that took place in the Salvadoran capital on 29 June 2013, who claims that, from January to June 2013, there have been [translation] "more than 30 killings" of LGBT persons in the country (*El Mundo* and Agencia EFE 1 July 2013). A representative of Asociación Entre Amigos states that, from January to June 2013, six [translation] "hate crimes" against LGBT persons were committed in the country, with a total of 150 since 1994 (AFP and *El Faro* 30 June 2013). *Diario Co Latino* reports that 7 transgender persons were killed in 2012; the highest number of such homicides, 24, reportedly occurred in 2009 (18 May 2013). HRC cites a representative of Asociación Entre Amigos as saying that "[t]he remains of the bodies frequently show signs of aggravated assault, torture, and rape" (30 Oct. 2013).

Diario Co Latino cites the Chief of the PDDH as saying that even though crimes against sexual minorities [translation] "have been happening for quite some time, they are rendered invisible since they are catalogued as any other crime. ... The main problem [we have] is to determine the motive" (18 May 2013). According to the executive director of *Elsalvador.org*, even though the motives of crimes against LGBT persons appear as [translation] "unknown" in the news, "we, as a community, do know that these are hate crimes" (La Página 27 Nov. 2013). Two sources indicate that all murders of LGBT persons remain unsolved (ibid.; HRC 29 Oct. 2013). ContraPunto cites the Chief of the PDDH, who stated that security and criminal investigation agencies [translation] "pay little attention" to complaints of "torture, killings, and threats" against sexual minorities and that there are "serious institutional deficiencies" when dealing with complaints filed by NGOs in such cases (17 May 2013).

3. State Protection and Support Services

Sources report that the Secretary for Social Inclusion and First Lady, Vanda Pignato, announced the creation of a Directorate for Sexual Diversity on 12 May 2010 (*La Prensa Gráfica* 13 May 2010; *El Diario de Hoy* 13 May 2010). The online El Salvadoran newspaper *El Diario de Hoy* reports that the Directorate will not be [translation] "an office that takes complaints, but a centre that does research and influences public policies" with regards to LGBT issues (ibid.). The website of the Directorate for Sexual Diversity indicates that they have the following responsibilities:

[translation]

- To promote the eradication of discrimination based on sexual orientation and gender identity.
- To promote knowledge regarding sexual diversity through information and awareness, and the elimination of stereotypes about lesbians, gays, bisexuals and trans people.
- To promote the creation of public policies that guarantee the basic human, economic, social, civil and political rights of sexual minorities (lesbian, gay, bisexual, transvestite, transsexual and transgender people), as any citizen.
- To promote the creation of services and of spaces free of homophobia, lesbophobia or transphobia, and any form of discrimination based on sexual orientation and gender identity, in which all individuals are treated with equal dignity and respect. (El Salvador 23 Nov. 2012)

Information on the effectiveness of the Directorate for Sexual Diversity could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that the Office of the Secretary for Social Inclusion launched the Call Center 131 on 17 May 2013 to provide assistance to LGBT people 24 hours a day, all year round (*Diario Co Latino* 18 May 2013; *La Página* 19 May 2013). The Call Center provides confidential psychological and emotional assistance free of charge through a team of professionals, as well as information about the rights of LGBTI persons and orientation in cases of discrimination against them (*ibid.*; *Diario Co Latino* 18 May 2013). Further information on the Call Centre could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. *Elsalvador.org* also offers an online complaint form to denounce mistreatment and discrimination against LGBT persons (*Elsalvador.org* n.d.b). Once filled out by the complainant, the form is forwarded to [translation] "competent authorities" (*ibid.*). The survey produced by the Directorate for Sexual Diversity indicates that 80.2 percent of respondents did not file complaints in cases of violence, discrimination, harassment, or abuse: 40.7 percent due to fear of reprisal and 25.1 percent due to mistrust of authorities (El Salvador 2012, 46). The survey also indicates that 213 out of the 400 respondents knew where to file complaints (*ibid.*, 47).

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 from the following organizations were unsuccessful within the time constraints of this Response: Asistencia Legal para la Diversidad Sexual El Salvador; Dirección de Diversidad Sexual; freelance journalist; Organización de Mujeres Trans Viviendo con VIH.

Representatives from the following organizations could not provide information within the time constraints of this Response: Asociación Entre Amigos; Elsalvador.org.com; Procuraduría para la Defensa de los Derechos Humanos; United Nations Development Programme office, El Salvador.

Internet sites, including: Amnesty International; Caracol; ecoi.net; *The Economist*; El Faro; El Salvador – Academia Nacional de Seguridad Pública, Centro de Documentación Judicial, Corte Suprema de Justicia, Fiscalía General de la República, Ministerio de Justicia y Seguridad Pública, Ministerio de Relaciones Exteriores; Factiva; Freedom House; United Nations – ReliefWeb, Revista Humanum; United States – Embassy in San Salvador; Universidad Centroamericana "José Simeón Cañas"; University of California – Berkeley School of Law; Washington Office on Latin America.

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