

November 2014

## General situation of LGBTI people

While the constitutional rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Colombia have been celebrated. However, in everyday life there is a lack of rule of law and poor implementation of constitutionally granted rights. As the awareness amongst LGBTI-persons of their rights is low, likewise the lack of service provision and information for this group is low. LGBTI persons belong to a highly discriminated group. LGBTI organisations face a difficult situation, like other human rights defenders in Colombia. There is no public information about crimes against LGBT people.

Transgender persons are exposed to hate crimes, police brutality and discrimination. According to a report from the Sexual Diversity Division of the Planning District Secretary of Bogotá, 98 percent of transgender persons in Bogotá have been discriminated against or had their rights violated when it comes to denied health services, problems with renting, and discrimination regarding the access of education. In Prisons, where violence and discrimination are high, LGBTI persons are vulnerable because of their gender expression and sexual orientation. Also, there is a problem of not addressing discrimination in the education systems, which places LGBTI youth at a high level of vulnerability and risk to discrimination.

One of the major problems for LGBTI persons in Colombia is the high level of violence towards LGBTI persons, not at least in conflict areas. LGBTI persons are not a high priority in work with armed conflict. Historically, LGBTI persons were victimised as part of the "social cleansings" from 1988, and at that time were tolerated by the government. Reports during the years have concluded that the practices have continued, with hundreds of documented murders of LGBTI persons. Apart from the killings, there are numerous narratives of disappearances and displacements of LGBTI persons.

During the years of 2006-2012, the LGBTI – organisation Colombia Diversa registered 629 homicides of LGBT people all over the country, and between 2010 and 2012 at least 91 cases of police abuse against LGBT people were reported, in both cases most of them against transgender people and gay men. LGBTI persons are affected by a complex system of structures which expose them to violence, discrimination and poverty. Human rights organisations and LGBTI groups allege that on many occasions, it is the local police and members of the armed forces that are responsible for threats, attacks, and the stigmatisation of members of the LGBTI community and their proponents. The effect is increased vulnerability, as police cannot guarantee protection. In the past, human rights organisations have noted many cases of LGBTI persons being targets of "social cleansing" by para-military groups.

## Legal and human rights instruments

### Constitutional provisions and legal framework

Same-sex sexual activity between consenting adults was decriminalised in 1980. In the Colombian Constitution of 1991, article 13 states that "the State will provide conditions for the equality to be real and effective, and will adopt measures in favour of marginalised or discriminated groups." Following this article, most advances of LGBTI-persons have since been granted due to judicial processes (mainly in the Constitutional Court) rather than legislative reforms. Since 2011, same-sex marriage is somehow allowed, following a ruling by the Constitutional Court that established the family status of same-sex couples. The court remarked the need for a "solemn contract" that would grant the same advantages (pension, social security and property rights) as for registered heterosexual couples. The National Congress did not correct the discrepancy. Since 2013, judges can use their discretion on the matter, with many of them performing same sex marriages, despite opposition from conservative groups and governmental inspectors.

Following jurisprudence by the Constitutional Court there is an Anti-discrimination law in employment and legislation that criminalises hate speech. There is the right for transgender persons to change legal gender. Intersexual persons have the legal right to free treatment, although the access is rather limited.

In 2014, the Colombian constitutional court determined that a health insurance company and a healthcare provider violated the rights of an intersex teenager by refusing his petition for gender reassignment surgery. Further, it also called upon the national health ministry to develop protocols that health providers should follow in the case of intersex children (including guidelines on decision making).

In 2011, Colombia passed Law 1448, "*Ley de Víctimas y de Restitución de Tierra*", a Victims Law. This law acknowledges and offers reparation to various groups including LGBTI-persons, who have faced abuse and violence in the armed conflict. LGBTI organisations welcome the inclusion of LGBTI persons in this law, but the results are still to be seen in practice. The government is also discussing a legislation regulating commercial sex, where the action of buying sexual service will be criminalised but not the person who sells sex. LGBTI-organisations see this as a risk of increased stigmatising of sex workers, as the record of police and state violence is already high.

Despite these legal provisions, there is a lack of rule of law in the everyday life of LGBTI persons, especially in the countryside and in smaller cities. According to LGBTI organisations, there are not enough resources or efforts put in by the state to combat the discrimination of LGBTI persons.

The Ombudsman for Human Rights, "La Defensoría del Pueblo", is an important institution to protect human rights, with offices all over the country. Since 2014, they work specifically with LGBT rights under the delegate of women and gender issues, but the delegate of constitutional issues is also an important office cooperating with the LGBTI movement. The support for LGBTI rights can vary between local offices in the country, but the Bogota office is reported to be a consistent supporter of LGBT rights.

## Regional or international human rights instruments

Colombia is a member of the UN and has ratified a number of conventions relevant for upholding LGBTI persons Human Rights, including CCPR - International Covenant on Civil and Political Rights, CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, and CESCR - International Covenant on Economic, Social and Cultural Rights.

Colombian LGBTI organisations have submitted shadow reports the last three years to different UPR sessions, e.g. The United Nations High Commissioner for Human Rights, UNHCHR, and CEDAW. In 2010, the LGBTI organisation Colombia Diversa submitted a Shadow Report to the United Nations Human Rights Committee on the Human Rights Situation of the LGBT Population. In it was concluded that the Colombian Constitution and other laws provide a series of judicial and administrative provisions that can be accessed by any Colombian citizen, but in practice the effectiveness of those provisions for LGBT persons is limited due to the historical discrimination they have been subjected to. UPR processes are a good example of how the voice of LGBTI persons can be raised and formally exposed to international forums.

The Inter-American Commission on Human Rights and its [Unit on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons](#) was created in 2011. According to the IACHR's Strategic Plan ([Plan of Action 4.6.i](#)), the Unit has commenced its activities on: petition and case system; providing specialised technical advice to OAS Member States and OAS political organs; and the preparation of a regional report on the human rights of these persons. On November 8, 2013, the Inter-American Commission on Human Rights (IACHR) created a Rapporteurship on the Rights of LGBTI Persons to give specialised attention to the work of the Inter-American Commission on the promotion and protection of the rights of LGBTI persons in the Americas. It has hosted a high-level panel of publicly elected officials who are openly gay, lesbian, and trans-persons in Colombia.

Since 1997, OHCHR has had an office in Colombia promoting Human Rights and monitoring the human rights situation in order to promote and protect fundamental human rights. These are also protected in the context of violence and internal armed conflict. The office also gives technical assistance and advice to the Government to promote respect and observance of human rights and international humanitarian law in Colombia. Technical assistance is also provided to civil society, non-governmental human rights organisations, and individuals to promote greater human rights to the general public <http://www.ohchr.org/en/countries/lacregion/pages/coindex.aspx>. Thus far, LGBTI rights have not been included in the reporting.

### **Sexual and Reproductive Health Rights, HIV/AIDS, and gender based violence**

According to UNAIDS annual report 2014 performed by the Colombian Government, the population most vulnerable to HIV infection are transgender women with median crude prevalence of HIV infection in four cities in the study of 15%, with higher number in Bogotá. Other studies have indicated that the prevalence amongst MSM is 20% and that this is the one group contracting the most new cases of HIV infections. Due to stigma and lack of access to information and health care, those groups are regionally, as well as globally, one of the most vulnerable groups in regards to contracting HIV. Researchers indicate that migration, sexual violence, sex work, and low rates of HIV testing are risk factors that increase vulnerability for HIV in the MSM population.

Another problem is the general lack of access to health care and SRHR education. There is a great need for addressing issues such as: right to health care and information for LGBTI persons and sex workers, psychological support to victims of gender based violence, victimised persons in conflict areas, and mechanisms to identify LGBTI-persons that are victims of violence.

### **Civil society organisations and institutions active in the LGBTI field**

While there is a need of a safe arena for LGBTI persons, the capacity and resources of many of these organisations are very limited. They do not have the capacity to provide all the necessary support to the LGBTI-community, as the state does not provide adequate assistance. There is a need for more information of rights, of health services, and of education, among other issues. There is also a need for the diverse cultural production of narrative stories of LGBTI-persons lives and various situations.

There is a need for decentralised support that better reach groups outside the larger cities, like smaller cities and rural areas. There is also the need for better access to health care and education on rights for LGBTI communities.

Some of the organisations working in Colombia are:

*Colombia Diversa*, based in Bogotá, is the largest LGBTI-organisation, working since 2004 with LGBTI rights. [www.colombiadiversa.org](http://www.colombiadiversa.org)

*Other organisations are Caribe Afirmativo*, based in Barranquilla y Cartagena, with focuses in the Colombian Caribbean Region. <http://caribeafirmativo.org>, *Santamaría Fundación* based in Santiago de Cali, is an organisation that works locally and regionally with transgender persons [www.sfcolumbia.org](http://www.sfcolumbia.org)

*ILGA-LAC* is the Latin American and Caribbean Region of the International Lesbian and Gay Association (ILGA). [http://latin\\_america\\_caribbean.ilga.org](http://latin_america_caribbean.ilga.org)

### **What Sweden can do – 7 questions to discuss**

Within the broader context of support to democracy, human rights, and gender equality in Colombia, Sweden has a great opportunity to include issues related to the rights of LGBTI persons. LGBTI rights are of high relevance in the two areas of priority: 1) peace and security and 2) human rights and democratic governance. Even so within the strategic issues for dialogue of a) negotiated peace process with a broad civil participation, b) respect of human

rights, end the impunity and gender equality and c) decreased discrimination and social exclusion for marginalised citizens of Colombia.

LGBTI organisations represent a group that have been extremely exposed amongst other human rights defenders. There is a need for strong LGBTI organisations that can speak for themselves in order to have the control of formulating their own agenda. When addressing LGBTI issues in a country such as Colombia where the government still fails to protect the interests of LGBTI persons, it is important to consult LGBTI organisations in the country to make sure their agenda is not overruled. Examples of things that could be discussed:

- Could Sweden do more to establish contacts with the LGBT organisations to keep updated on the legal and security situation of LGBTI persons and when needed contribute to the protection of organisations and activists at risk (also reaching LGBTI persons outside Bogotá and the larger cities in marginalised areas like those in conflict, rural areas and areas of indigenous people and of afro-Caribbean origin).
- Could Sweden do more to include LGBT organisations in social, cultural, professional events, and networks to give them as much space as they are ready and willing to take?
- Could Sweden do more in terms of supporting the cultural production of LGBTI people's stories, through film, literature, and documentaries?
- Could Sweden do more to seek strategic alliances (with likeminded donors, UN and EU agencies) and bring up LGBTI rights in the dialogue

with government, e.g. in connection with legal reform programmes, human rights implementation mechanisms, gender equality/gender based violence programmes and SRHR and HIV/AIDS plans?

- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations, HR institutions (e.g. Ombudsman) and HR reporting processes supported?
- Could Sweden do more to include the LGBTI population in gender equality and gender based violence initiatives?
- Could Sweden do more to include LGBTI organisations in civil society capacity development programmes, so that they can improve their effectiveness, networking and outreach, (trying to allocate means to grass-root organisations and a diverse pool of organisations working under very different circumstances, while at the same time supporting their cooperation/networking in order to decrease the risk of competition and disunity).

For further advice on dialogue regarding LGBT issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). Also refer to the [EU tools](#) and guidelines in the reference list.

More specific advice and support measures, as well as contact information to mentioned groups, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue.

## References

### General references

RFSL, *LGBT in Development*, An introduction in how to include LGBT in programming in development: [http://www.rfsl.se/public/LGBT\\_in\\_development.pdf](http://www.rfsl.se/public/LGBT_in_development.pdf)

Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue' and the Ministry of Foreign Affairs [Dialogue brief](#).

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#)

### Specific references

Asdown Colombia, et.al. 2013, *From Forced Sterilization to Forced Psychiatry: a report on Violations of the Human Rights of Women with disabilities and Transgender Persons in Colombia, to the 7th/8th periodic reports of Colombia to CEDAW 56th Session*. <http://iglhrc.org/content/forced-sterilization-forced-psychiatry-violations-human-rights-women-disabilities-and>

ABColumbia et.al, 2011, *Women human rights defenders and the struggle for justice in Colombia* [http://www.abcolombia.org.uk/downloads/1202Ammended\\_WHRD\\_report2011\\_ENGLISH.pdf](http://www.abcolombia.org.uk/downloads/1202Ammended_WHRD_report2011_ENGLISH.pdf)

Canada: Immigration and Refugee Board of Canada 2013, *Colombia: Instances of "social cleansing" in Bogotá and Santiago de Cali, including of sexual minorities, drug addicts and the homeless "* (2011-May 2013), 7 June 2013, <http://www.refworld.org/docid/52147bd04.html>

Colombia Diversa. 2013. *Impunidad sin fin: Informe de derechos humanos de lesbianas, gay, bisexuales y personas trans en Colombia 2010 – 2011*, [http://colombiadiversa.org/colombiadiversa/images/stories/PUBLICACIONES\\_FINAL/DOCUMENTOS/INFORMES\\_DH/documentos/InfDDHH%202010\\_2011.pdf](http://colombiadiversa.org/colombiadiversa/images/stories/PUBLICACIONES_FINAL/DOCUMENTOS/INFORMES_DH/documentos/InfDDHH%202010_2011.pdf)

Colombia Diversa 2010, *Human Rights Situation of the LGBT Population- Shadow Report submitted to the United Nations Human Rights Committee*, <http://iglhrc.org/sites/iglhrc.org/files/421-1.pdf>

HRW, 1994, *Generation under Fire- Children and violence in Colombia* <http://www.hrw.org/reports/1994/colombia/gener1.htm>

Intersex association North America, 2014, <http://www.isna.org/node/21>

Ministerio de Salud y Protección Social República Colombia, 2014 *Seguimiento de la Declaración de compromiso sobre el VIH/Sida* [http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/COL\\_narrative\\_report\\_2014.pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/COL_narrative_report_2014.pdf)

Zea Maria Cecilia, et al, 2013, *Armed conflict, homonegativity, and forced internal displacement: Implications for HIV among Colombian gay, bisexual, and transgender individuals*, *Cult Health Sex*. Aug 2013; 15(7): 788–803, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3732551/>

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, briefs have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.