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# **STATE-SPONSORED HOMOPHOBIA**

**A WORLD SURVEY OF SEXUAL ORIENTATION LAWS:  
CRIMINALISATION, PROTECTION AND RECOGNITION**

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# DEVELOPMENT AND HUMAN RIGHTS: TWO COMPLEMENTARY FRAMEWORKS

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In the past few years issues related to sexual orientation and gender identity have gained serious attention and increasing support in the human rights arena. However, these issues have not received the same momentum in discussions about development. This article compares the human rights approach to the development approach, and suggests how a development approach may be useful to those seeking improvements in the lives of LGBT people.

## DIFFERENCES

Development and human rights constitute, along with peace and security, the pillars of the United Nations system. As discussed in more detail below, the development and human rights frameworks have close ties to each other, both conceptually and operationally. However, despite recent efforts to harmonise these two approaches, the UN Special Rapporteur on extreme poverty and human rights has called them “ships passing in the night.”<sup>36</sup> Below we argue that both are important for understanding and addressing the needs of LGBT people, and we suggest ways of drawing on the strengths of both approaches.

### A. ORIGINS: SEPARATE HISTORIC PATHS

In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights, which identified the core human rights standards. Since then, member States have adopted treaties addressing civil and political rights, economic, social, and cultural rights, racial discrimination, and the rights of children, migrant workers, and people with disabilities. For the past several years, LGBT advocates have been seeking to have their human rights recognised under these and other human rights treaties. Initially, these efforts were not successful. In a survey of global and regional LGBT leaders, the “Brazil Resolution” was identified as the turning point.<sup>37</sup> In 2003, Brazil introduced a resolution at the meeting of the Human Rights Commission

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<sup>36</sup> Philip Alston, “Ships Passing in the Night: the Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals,” *Human Rights Quarterly* 27(3) (2005).

<sup>37</sup> Dodo Karsay, *How Far Has SOGII Advocacy Come at the UN and Where Is It Heading? Assessing Sexual Orientation, Gender Identity, and Intersex Activism and Key Developments at the UN, 2003-2014* (ARC International, 2014), at 8.

(now the “Council”) to recognise that human rights and freedoms belong to all people, regardless of their sexual orientation. Though the measure was not adopted, it received enough support to move LGBT issues from the margin into the mainstream of human rights discussions.

UN officials began asking the question “Which international human rights standards apply to LGBT people?” Three years later the Yogyakarta Principles were launched. They articulate “... the existent state of international human rights law, ... and affirm binding international legal standards with which all States must comply.”<sup>38</sup> According to the survey of LGBT leaders, the Principles “played a crucial role in establishing the language on SOGI that is now used by a growing number of UN actors and States.”<sup>39</sup>

In contrast to the advancement of sexual and gender minority issues in the field of human rights, these issues have not advanced to the same extent in the field of human and economic development. The development agencies that we now know as the World Bank Group were initially created in the 1944 Breton-Woods Conference in which the allied nations established the post-war financial system. The following year the United Nations Charter was adopted. The Preamble identifies the need to promote “...social progress and better standards of living...” to “...employ international machinery for the promotion of economic and social advancement of all peoples”,<sup>40</sup> and Article 55 calls upon states to create “...solutions of international economic, social health and related problems.”<sup>41</sup> In the following decades other development agencies were established, both by the UN and by individual donor countries.

For several decades, development agencies used national-level economic indicators to gauge standard-of-living. Measures such as Gross Domestic Product (GDP) can be uniformly tracked in all countries and captures the overall value of goods and services produced in a nation’s economy, providing one measure of economic development. Yet, GDP does not tell us the full story about how all individuals are faring within an economy, how healthy they are, whether they can read, whether they are learning, or whether they are safe. In the late-1980s, Indian economist Amartya Sen developed an approach to development which focused on individual freedoms rather than national economic results. He defined development as the “process of enlarging people’s choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living”.<sup>42</sup>

In 1990, economist Mahbub ul Haq introduced one of many indices -- the Human Development Index. The HDI is intended to reflect a simplified measurement of standard-of-living by consolidating measurements of longevity, education and income. Health, knowledge and income are three central capabilities that underlie a person’s freedom to make other choices.

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<sup>38</sup> Sonia Onufer Correa, Vitit Muntarbhorn, *Yogyakarta Principles*, Introduction, 7 March, 2007, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

<sup>39</sup> Karsay, *How Far Has SOGI Advocacy Come*, at 8.

<sup>40</sup> The United Nations Charter, Preamble, 26 June 1945.

<sup>41</sup> The United Nations Charter, Article 55, 26 June 1945.

<sup>42</sup> *Human Development Report*, “United Nations Development Programme”, (New York: Oxford University Press, 1990), at 1.

Because sexual and gender minorities have had gender roles and sexual norms forced on them, being able to choose their own path in life is a vital priority. The human development approach defines a process in which an individual can formulate their own sexual orientation and gender identity and seek support to live a life of their choosing.

Since then, a series of world conferences and summits has produced sets of development goals which, all together, have come to be known as the development agenda. In 2015, the Sustainable Development Goals were adopted, replacing the Millennium Development Goals that had been adopted 15 years earlier. The SDGs include goals of ending hunger, promoting access to efficient energy, enhancing economic growth, promoting health and well-being, and achieving gender equality. Increasingly, concerns about equity for marginalised groups have emerged to shape development priorities, particularly around gender equity, but also for people with disabilities and for ethnic and racial minorities. LGBT people are included in the development goals, as are all people, and would likely benefit from achievement of general development goals. However, none of the goals have been created to specifically respond to the development needs of LGBT people.

Research indicates that LGBT people face many barriers to full human development that are related to their sexual orientation and/or gender identity. Studies around the world have shown that when compared with non-LGBT people, LGBT people earn less, have fewer job opportunities, live in poverty, experience poorer health outcomes, face obstacles to education, and experience violence and family rejection.<sup>43</sup>

In the past few years, more development agencies have begun launching programs to respond. The United Nations Development Programme has initiated a process to create an LGBTI Inclusion Index which will measure aspects of economic, social and political exclusion. These efforts constitute some of the first attempt to measure human development on a global level.<sup>44</sup>

## ***B. HUMAN RIGHTS AND DEVELOPMENT: DIFFERENT SYSTEMS***

Seeking a development response to LGBT issues involves more than trying to transplant human rights priorities into a development context. Because the two frameworks are different, a development agenda requires a separate analysis.<sup>45</sup>

First, and most obvious, is the fact that, operationally, the two frameworks are managed by separate entities. The UN human rights system, as it is sometimes called, includes the Office of the High Commissioner of Human Rights, the Human Rights Council, the treaty systems, UN member states, and regional treaty bodies.

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<sup>43</sup> M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014), at 20-27.

<sup>44</sup> Clifton Cortez, "When people are counted, no one is left behind," *Our Perspectives*, United Nations Development Programme website, December 10, 2015, see: <http://www.undp.org/content/undp/en/home/blog/2015/12/10/When-people-are-counted-no-one-is-left-behind.html>

<sup>45</sup> Nordic Trust Fund (GHK Consulting Ltd), *Human Rights and Economics: Tensions and Positive Relationships* (Washington D.C., The World Bank, 2012), at 6-9.

The global development system includes the many development agencies that distribute roughly \$140 billion in development assistance each year, about one-fifth of which goes through multi-lateral agencies such as the World Bank. At the United Nations, the system includes the large array of agencies in the United Nations Development Group and constitutes 60% of the UN budget.<sup>46</sup>

NGOs constitute an important component of each system, conducting advocacy, partnering with governments, implementing programs, and distributing funding. Globally, LGBT organisations have focused primarily on human rights issues.

Studies of LGBT NGOs and LGBT funders show that most operate under a human rights approach and prioritised issues of civil and political rights. Advocacy and public education activities related to human rights predominate over services related to development.

However, neither human development nor economic development appear among the top categories of funding for LGBT issues, and in one study “economic development” received less than one percent of total funding.<sup>47</sup>

### C. FOCUS: INSTITUTIONS VERSUS INDIVIDUALS

The human rights framework focuses primarily on state actors and social or economic institutions, such as schools, healthcare providers, employers, and landlords. The question asserted by the human rights system is whether a State and other important institutions are in compliance with human right standards.

Human development, on the other hand, is people-centered. Institutions are seen as a means to an end, the ultimate goal being an improvement in individual outcomes and well-being. The question guiding the development system is whether LGBT people are able to experience life in a particular way, including the capability to have full health, decent work, and a complete education. The development system uses many kinds of interventions that could also be used to improve LGBT’s well-being.

For example, the right to equality is one of the most recognised of the human rights, and is arguably the central right claimed by LGBT advocates. A government that is treating LGBT people poorly could still be complying with human rights-based requirements of equality if it treats everyone equally poorly. A development approach would seek to improve the level of outcomes of individual LGBT people at whatever level they are at, and regardless of whether they are experiencing disparities.

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<sup>46</sup> United Nations General Assembly, Economic and Social Council, *Implementation of General Assembly resolution 67/226 on the quadrennial comprehensive policy review of operational activities for development of the United Nations system, Report of the Secretary General*, A/69/63–E/2014/10, 6 February 2014, at 8.

<sup>47</sup> Robert Espinoza, *A Global Gaze: Lesbian, Gay, Bisexual, Transgender and Intersex Grantmaking in the Global South and East*, 2010, Funders for LGBTQ Issues (2011), at 13-14; Robert Espinoza, *A Global Gaze: Lesbian, Gay, Bisexual, Transgender and Intersex Grantmaking in the Global South and East*, 2005, Funders for LGBTQ Issues (2007), see: [https://www.lgbtfunders.org/files/FLGI%20LGBTI\\_GFRprWeb.pdf](https://www.lgbtfunders.org/files/FLGI%20LGBTI_GFRprWeb.pdf)

## ***D. EVIDENCE: LAWS VERSUS LIVED EXPERIENCE***

One simple way to assess whether a government is upholding human rights standards is to look at the country's laws. The present ILGA *State-Sponsored Homophobia* report lists both laws that violate human rights norms (such as laws criminalising same-sex sexual acts or forbidding LGBT people from adopting) as well as laws that comply with human rights standards (such as law prohibiting discrimination and laws permitting gender change). However, some of the laws listed in this publication may not be the best measures of the lived experience of LGBT people in those countries.

As indicated in the report, countries like South Africa, Serbia, Brazil, Kosovo, and the US have some of the best legal protections in the world. Judging by the laws alone, one might conclude that life for LGBT people in these countries is flourishing. However, research focusing on the lived experience of LGBT people in those countries demonstrates that they face more violence and economic inequality than non-LGBT people. Conversely, one might conclude that being LGBT in India, Kenya, and Lebanon is impossible given that these countries have criminal prohibitions on same-sex sexual activity and gender non-conformity. But vibrant social movements have emerged that are improving the quality of life for LGBT people in those countries.

Those using a development approach would look at data about development outcomes to assess the lived experience of LGBT people. Some development measures are based on individual-level outcomes, such as health status, expected life-span, income levels, educational attainment, job skill levels, rates of violence, and ability to obtain food and housing.

Say, for instance, that there are indications that LGBT people are facing barriers in the workplace. As a starting point, the human rights approach might look at the policies of the employer, the relevant laws, and whether there are any patterns of unfair treatment by the employer. A development approach might start by looking at LGBT workers themselves, seeking information about rates of joblessness, underemployment, job skills, and work availability.

The two approaches overlap in their attention to measures of opportunities available to LGBT people, and the effect that state policies have on those opportunities. In the human rights framework the lived experience of LGBT people, as rights-holders, can serve as a basis to question states about their commitment to LGBT human rights. In the development framework, State policies often determine whether LGBT people have the opportunity to live lives of dignity and can make choices that enhance their well-being.

## ***E. ABSOLUTES V. TRADE-OFFS***

Both the development framework and the human rights framework can be used to evaluate policies and activities of governments and private actors. The goal of good policy, according to the human rights framework, is to fully comply with human rights standards, sometimes without regard to trade-offs and costs of compliance. For example, giving and LGBT person a fair trial is

an absolute obligation, even if the cost of setting up the necessary judicial structures would take money away from other, possibly more successful, efforts to fulfill the human rights of others. Though some progressively realisable rights, like the highest attainable standard of health, can be calibrated for budgetary limitations, many rights are absolute.

Many in the development field rely on economic methods and are able to use those methods to balance trade-offs that may occur as a result of policy choices. According to these methods, a policy is preferred if it makes some people better off and no one is worse off (or, relatedly, those made worse off can be fully compensated). For example, a labor policy might prioritise the ability of an aggrieved LGBT worker to sue their employer. Though this may vindicate the rights of someone fired from a job, in the long run placing the same resources into a job-training program may be a better strategy to improve their ability to earn a living. Similarly, a policy to evacuate LGBT from hostile countries may recognise their legal status as a refugee though ultimately it may place them in a less favorable housing and work situations in a foreign country.

Other goals within the development framework might include moving toward equality in outcomes (as with the Sustainable Development Goals), avoiding environmental harms, or promoting democracy. Given multiple goals, development policy must incorporate potential trade-offs of each of those goals. Furthermore, policies might face constraints related to cost, feasibility and time limitations. Not surprisingly, goals and targets of development policy are often stated in incremental terms.

## SIMILARITIES AND OVERLAP

Economics and human rights are related to one another. Freedoms and rights can set the stage for increased productivity. For example, a young LGBT person who is free of discrimination is more likely to be able to get a better education and to contribute more to the economy. Similarly, an LGBT person in a country with enough funding to properly train its police force will be able to live life more freely and with more dignity. A recent study of 39 emerging economies found a positive correlation between rights for LGBT people and per capita GDP. That positive correlation is likely a result of greater inclusion of LGBT people promoting greater productivity, and of richer countries being more likely to pass laws granting LGBT rights.<sup>48</sup>

Additionally, many so-called ‘second generation’ rights call for an economic analysis on the part of the human rights analyst. For example, rights to the highest attainable standard of health or education require a determination of what a state can provide given budgetary constraints and resource trade-offs.

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<sup>48</sup> M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014), 2-3.

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## CONCLUSION

The human rights framework and the development framework are complementary and can accomplish much that could not be accomplished by either framework alone. LGBT human rights practitioners should understand economic methods to identify when governments have violated human rights, particularly for determining the level of burden on a government as part of progressively realised rights. Additionally, development strategies can be used in communities where anti-LGBT hostilities may be so high that changes in legal standards seem unlikely.

Development practitioners should understand human rights standards in order to ensure that development programs include marginalised populations and, where necessary, to target those populations, such as LGBT people. Also, development programs can use human rights standards as goals to be accomplished by programs which include State and non-State actors.

Each of these approaches requires a significant increase in efforts to collect data from individuals and communities. These efforts should be undertaken in ways which comply with the highest concerns of the development and human rights field.



LUCAS RAMÓN MENDOS<sup>826</sup> AND TAMARA ADRIÁN<sup>827</sup>

## THE AMERICAS: STEADY PROGRESS TOWARDS EQUALITY FOR LESBIANS, GAYS AND BISEXUALS IN 2015

The Americas can be described as the region in the world which concentrates - together with Europe - most of the progress achieved in the global fight for legal equality. In many countries the legal situation of LGBTI people is much more advanced than in the Global North countries. Notions such as co-maternal or co-paternal rights since birth, or legal recognition of the identity of trans population without pathologising requirements and the need of any kind of medical treatments or intervention, are becoming the rule. However, at the same time, the region shows the highest levels of violence and murder against LGBTI population, and in the most of the cases impunity is the rule.

Strategies at the regional, national, and local levels have therefore focused on investigating and disclosing the alarming levels of violence experienced by LGBT people and the need to secure civil rights, including freedom from discrimination, access to justice, and family rights. 2015 has seen a steady increase in the tendency to focus debates and discussions on securing access to economic, social and cultural rights on an equal footing. This has been reflected in the work carried out by civil society organisations on the ground, in their advocacy for new legislation, in their approach to strategic litigation, and in the agenda brought forward at the United Nations (UN) and the Organization of American States (OAS). The fight for equality in the region has gained major traction and visibility. Indeed, in several countries, an increasing number of lesbian, gay and bisexual people have been elected or otherwise designated in high-ranking government positions.<sup>828</sup>

According to the Americas Quarterly Social Inclusion Index 2015, Uruguay, Argentina and Brazil have scored the best qualifications in LGBT inclusion, followed by Colombia, Ecuador, Mexico, and the United States.<sup>829</sup> Furthermore, Uruguay, Canada and Argentina are the only three countries in the Americas among the top 15 nations in the Gay Happiness Index.<sup>830</sup>

<sup>826</sup> Lucas Ramón Mendos is an Argentine human rights lawyer, lecturer on human rights and gay activist. He currently works at the Williams Institute (Los Angeles), and is also doing post-grad studies at UCLA. He previously worked with the LGBTI Rapporteurship at the Inter-American Commission on Human Rights (OAS-IACHR) and the Office of the Defender General in Argentina.

<sup>827</sup> Tamara Adrián is a Venezuelan law lecturer, politician, and human rights activist, elected to the National Assembly of Venezuela in 2015. She is the current Chairperson of the Board of Directors of the IDAHO-T Committee, the Alternate Co-Secretary General on ILGA's Executive Board, Female Copresident of the International Lesbian, Gay, Bi, Trans, and Intersex Law Association (ILGLaw) and female co-president of the Gay, Lesbian and Trans International Sport Association (GLISA).

<sup>828</sup> In Argentina, María Alejandra Aranda (Marita Curi) became the first lesbian elected as a communal representative in the City of Buenos Aires. In Canada, openly gay MP Scott Brison was appointed President of the Treasury Board of Canada by the newly installed Prime Minister, Justin Trudeau. In the United States, Kate Brown became first out bisexual governor when she took office in Oregon, and Jackie Biskupski, an out lesbian, was elected mayor of Salt Lake City, Utah.

<sup>829</sup> At the bottom ranks of the scale, Honduras, Paraguay, Guatemala and Panama obtained the lowest scores. Canada and the Caribbean were not included in this index. The report is available at: <http://www.americasquarterly.org/charticles/social-inclusion-index-2015/>

<sup>830</sup> This index is produced by the Johannes Gutenberg University of Mainz in Germany and Planet Romeo. For more information on this index, visit: <https://www.planetromeo.com/en/lgbt/gay-happiness-index/>

## REGIONAL ADVOCACY

Within the framework of the OAS, the Summit of the Americas took place in Panama City in April. Presidents Barack Obama and Dilma Rousseff referred to the issue of discrimination against LGBT people in their speeches. The OAS LGBTTTI<sup>831</sup> Coalition reported an unprecedented level of lobbying by religious organisations, which systematically blocked efforts to include references to sexual and gender diversity at the Civil Society Forum.

Strong lobbying by these organisations was also reported on the rise at the 45<sup>th</sup> Regular Session of the OAS General Assembly in June. Even so, the Assembly adopted the Inter-American Convention on Protecting the Human Rights of Older Persons, which expressly prohibits discrimination against older people on the basis of sexual orientation and gender identity. Argentina, Brazil, Chile, Costa Rica and Uruguay were the first countries to sign the treaty.<sup>832</sup> Furthermore, Bolivia and Chile joined the group of signatories of the Inter-American Convention against All Forms of Discrimination that included, for the very first time in a multinational treaty, protection against discrimination on the basis of sexual orientation and gender identity.<sup>833</sup> However, there may be a long way ahead until such treaties become effective in the region.

LGBT civil society organisations held several regional meetings in 2015 to share and exchange best practices and to strategise on international advocacy for equality at the national and international levels.<sup>834</sup>

## FAMILY RELATIONS

The region has seen considerable progress in the legal recognition of family relations of lesbian, gay and bisexual people. In June, the United States Supreme Court determined that same-sex couples have a constitutional right to marry in all 50 states of the Union.<sup>835</sup> Same-sex marriage also became legal in several Mexican states, and the Supreme Court of Justice decided that a marriage entered into with any state of the union is valid in the other states, even if they do not

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**831** This group was founded back in 2006, in order to participate as organised civil society in the spaces of the Inter-American system. Back in that time there was a distinctive difference between Transgender, Transsexual and Travestite persons, that has practically disappeared since then, particularly because the Gender Identity Laws enacted in many countries do not require for surgeries in order to legally recognise the identity.

**832** For more information on signatory states and ratifications, visit: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-70\\_human\\_rights\\_older\\_persons\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp)

**833** This is the other OAS human rights treaty which contemplates sexual orientation and gender identity as prohibited grounds of discrimination. The explicit mention of sexual and gender diversity in these binding instruments is the result of several years of successful lobbying by the OAS LGBTTTI Coalition. For more information on signatory states and ratifications, visit: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-69\\_discrimination\\_intolerance\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp)

**834** In September, numerous Caribbean LGBT activists met in Grenada for the OECS Litigation and Advocacy Strategy Meeting. In October, LGBT political leaders from all over the hemisphere met in Tegucigalpa, Honduras, for an intensive two-day regional conference. In December, gay male leaders met in Curitiba, Brazil, and founded Gay Latino, a regional network for the advancement of gay men's rights in Latina America.

**835** This decision also legalised same-sex marriage in Puerto Rico and other US overseas territories. It remains still uncertain if the decision will have effect in the American Samoa. It bears mentioning that religious organisations have actively tried to undermine the Supreme Court decision by passing Religious Freedom Restoration Acts (RFRAs) or introducing similar bills, which would open the possibility to discriminate against LGBT people due to "religious objections." In fact, the United States did not accept a UPR recommendation to take affirmative steps to ensure that individuals' religious refusals are regulated to conform with international human rights standards that protect sexual and reproductive rights and the rights to equality and non-discrimination on the basis of sex, gender, sexual orientation or gender identity.

legally recognise the right to marry in their territories. It also said that it is unconstitutional for a state of the union prohibit or limit the right to marry for same-sex couples.<sup>836</sup>

Moreover, same-sex civil unions became legal in Chile and Ecuador. In Costa Rica, a judicial decision granted certain rights to a same-sex couple, making it the first *de facto* union legally recognised in Central America. In Brazil, the Superior Tribunal of Justice granted to one of the partners of a same-sex *de facto* union the right to request alimony after separation. And in 2016, the Constitutional Court decided that it was unconstitutional to deny the right to marry to same-sex couples, and granted the right with immediate effects.

As it relates to parentage, same-sex adoption became legal in Colombia, in the Mexican State of Campeche, and in the British Overseas Territory of Bermuda. Most notably, the first case of triple parentage in Latin America was registered in Argentina.

However, in some other countries, the fight for equal family rights suffered major defeats. In Nicaragua, the newly enacted Family Code prohibits same-sex marriage and adoption. In El Salvador, the national legislature took the first steps towards a constitutional ban same-sex marriage. In Peru, a same-sex civil union bill was defeated in Congress. Quite surprisingly, in the United States, a Utah juvenile court ordered a baby to be removed from the care of a lesbian couple and be placed with a heterosexual couple, stating, “it was for the child’s wellbeing”. In Jamaica and Paraguay, hundreds rallied against same-sex marriage even though the issue was not part of any parliamentary debate or proposal.

## MEASURES TO CURVE DISCRIMINATION

Although the eradication of prejudice against sexual and gender diversity is generally considered the ultimate way to put an end to discrimination against lesbian, gay and bisexual people, anti-discrimination laws are a key tool towards this major goal. On the one hand, they grant victims with a legal course of action to seek remedies and invalidate acts of discrimination and, on the other hand, they set a legal standard under which no other law or public policy may restrict rights on the basis of sexual orientation.

In Argentina, a comprehensive anti-discrimination law, which explicitly bans discrimination based on sexual orientation and gender identity, was passed in Buenos Aires.<sup>837</sup> In the United States, the White House publicly supported the Equality Act, which would amend the 1964 Civil Rights Act to ban discrimination on the basis of sexual orientation.<sup>838</sup> In Peru, several local governments issued regulations which included the prohibition of discrimination based on sexual orientation.<sup>839</sup>

<sup>836</sup> These include Jalisco, Nayarit, Chihuahua, and Mexico State. The legality of same-sex marriage was determined either by legislative action or by means of judicial decisions. Even though the Mexican Supreme Court declared that any law banning same-sex marriage throughout the country is unconstitutional, the decision does not automatically strike down legal bans in force. In this line, the National Human Rights Commission of Mexico issued in December a recommendation to all Mexican states, requesting them to allow same-sex marriages in their jurisdictions.

<sup>837</sup> This law applies only to the City of Buenos Aires, the Capital of Argentina. Local LGBT organisations have denounced that a similar federal bill (which would grant nationwide protection) is being blocked by members of the National Congress.

<sup>838</sup> However, local organisations have stated that it is very unlikely that this bill will be approved with Republicans now in control of both chambers of Congress.

<sup>839</sup> These include the Municipalities of Miraflores and Santa Anita, in Lima, and the district of Belén, in Iquitos.

In 2015, different UN Treaty Bodies have urged certain Latin American States to enact this kind of legislation to combat stereotypes and prejudice against LGBT people.<sup>840</sup> Similar recommendations formulated in the context of the United Nations Universal Periodic Review (UPR) were accepted by Honduras and, most notably, by Jamaica and Guyana. However, Grenada and Saint Kitts and Nevis decided not to accept any of the recommendations on the subject formulated to them in their respective UPR evaluations.

## VIOLENCE

In December 2015, the Inter-American Commission on Human Rights (IACHR) launched its first thematic report on violence against LGBTI people in the Americas, presenting the world with copious - oftentimes disturbing - information on the levels and forms of violence against LGBTI people in the hemisphere.<sup>841</sup> Extrajudicial executions and killings, sexual violence and police brutality were among the most serious issues of concern to the IACHR.

Along these same lines, in 2015 the UN Committee against Torture (CAT) and several UN Special Rapporteurs expressed concern about police brutality and homophobic violence in certain Latin American countries.<sup>842</sup> Moreover, bills to increase the penalties for crimes committed on the basis of sexual orientation were introduced in Panama and Honduras.

Numerous initiatives to train and sensitise law enforcement officials on human rights of LGBT people were implemented across the Americas, including in Antigua and Barbuda, Argentina, Brazil, Canada, Chile, Colombia, Cuba, Guatemala, Grenada, Jamaica, Mexico, Saint Kitts and Nevis and the United States. Notably, a good number of these trainings took place in countries of the English-speaking Caribbean. The United States Department of Justice issued new guidelines to identify and prevent gender bias in law enforcement response to sexual assault and domestic violence, which includes specific considerations for crimes committed against LGBT people.<sup>843</sup>

Most regrettably, the head of the Venezuelan Presidential Commission for Police Reform delivered homophobic statements on TV, saying gay men willing to serve for the Venezuelan police cannot publicly declare their homosexuality.

A controversial judicial decision by an Argentine court - which considered the purported sexual orientation of a six year old boy as an extenuating circumstance for the sexual abuse he had

<sup>840</sup> The Human Rights Committee urged Venezuela (CCPR/C/VEN/CO/4) to redouble its efforts to combat stereotypes of and prejudice against LGBTI persons and ensure that acts of discrimination are prevented and that acts of violence against such persons are investigated effectively. The Committee on Economic, Social and Cultural Rights urged Venezuela (E/C.12/VEN/CO/3) and Paraguay (E/C.12/PRY/CO/4) to enact legislation to provide protection against discrimination in the access to ESCR, in particular access to employment, social security, health care and education.

<sup>841</sup> The IACHR report is available (in Spanish only) at <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf>

<sup>842</sup> The Committee against Torture urged Colombia to investigate these crimes and to provide mandatory training to law enforcement officers on the prosecution of cases involving the commission of acts of violence motivated by a person's sexual orientation or gender identity (CAT/C/COL/CO/5). The UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern about violence against LGBT people and LGBT defenders in Honduras and Ecuador (A/HRC/28/63/Add.1 and A/HRC/29/25/Add.3). The Special Rapporteur on the situation of human rights defenders also brought up the use of anti-terrorist legislation to deprive LGBT defenders of their liberty (A/HRC/28/63/Add.1).

<sup>843</sup> A full text copy of the document is available at: <https://www.justice.gov/opa/file/799366/download>

suffered - created an uproar among local LGBT organisations, academic institutions and even governmental agencies. The IACHR also issued a press release in reaction to it.<sup>844</sup> A few months later the decision was quashed by the Supreme Court of the Province of Buenos Aires.

## CRIMINALISATION OF SAME-SEX RELATIONS IN THE CARIBBEAN

The 11 countries in the western hemisphere that still keep laws criminalising same-sex relations are located in the English-speaking Caribbean, and there is still strong political resistance to eliminate these laws.<sup>845</sup> This was reflected in the fact that none of the Caribbean countries evaluated in the 2015 UPR sessions accepted recommendations to move towards that goal.<sup>846</sup> However, in many of them, local organisations are actively engaged in advocacy to have these laws repealed. In 2015, Jamaican activist Maurice Tomlinson brought forward a new challenge against local sodomy laws, after a similar lawsuit was dropped in 2014.

Despite the strong sentiment against sexual and gender diversity in a large part of Caribbean societies, several public officials issued positive statements with regard to LGBT equality.<sup>847</sup> Furthermore, several LGBT pride events were held throughout the Caribbean.<sup>848</sup> The work of two outstanding lesbian activists, Donnya Piggott and Angeline Jackson, was publicly acknowledged by Queen Elizabeth II and Barack Obama, respectively.<sup>849</sup>

## EQUALITY IN ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In 2015, the OAS Working Group on the Protocol of San Salvador celebrated its first sessions to analyse national reports on the progress made by OAS Member States on economic, social and cultural rights.<sup>850</sup> Several governments included variables on sexual orientation in their reports regarding social security, health, and education. Moreover, the UN Committee on Economic Social

<sup>844</sup> The press release is available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/059.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/059.asp)

<sup>845</sup> These countries have laws that are applicable to the general population. Other countries in the Americas still have similar regulations applicable only to members of security or armed forces. Panama for instance, did not accept a recommendation to repeal such regulation. For its part, the IACHR took a case before the Inter-American Court on Human Rights concerning Ecuador's international responsibility as a result of the decision to discharge the alleged victim from the army after he was allegedly found engaging in same-sex relations (*Case Homero Flor Freire v. Ecuador*). Moreover, several countries in the Americas still keep laws and regulations on 'public morals', which are used by law enforcement officials to persecute and abuse LGBT people. For more information on this issue, see IACHR Report on Violence against LGBTI people, available at: <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf>

<sup>846</sup> These include Grenada, Guyana, Jamaica, Saint Kitts and Nevis, and Saint Lucia.

<sup>847</sup> These include Senator Vynnette Frederick from Saint Vincent and the Grenadines; Jamaican Minister of Justice, Mark Golding, and the Mayor of Kingston, Angela Brown Burke; Belizean Minister of Housing, Michael Finnegan; the Grenadian Prime Minister, Keith Mitchell; and Leslie Ramsammy, former Health Minister of Guyana.

<sup>848</sup> Pride events took place in Barbados, Belize, Curacao, Jamaica, and Suriname.

<sup>849</sup> Donnya Piggott, director of Barbados Gays and Lesbians Against Discrimination (BGLAD), was awarded the Queen's Young Leaders Award for her activism for the rights of LGBT people in Barbados; Angeline Jackson, founder and executive director of Quality of Citizenship Jamaica (QCJ) was acknowledged by Barack Obama in his speech at the University of the West Indies in Kingston as one of the island's "remarkable young leaders".

<sup>850</sup> The Protocol of San Salvador is the additional protocol to the American Convention on Human Rights to ensure Economic Social and Cultural Rights. Pursuant to the provisions of the Article 19 the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol. For more information, visit: <http://www.oas.org/en/sedi/dsi/protocol-ssv/>

and Cultural Rights (CESCR) urged certain Latin American governments to enact legislation to provide protection against discrimination in the access to employment, social security, education, health care and education.<sup>851</sup> For its part, the UN Committee on the Rights of the Child expressed concern about discrimination against LGBT children, particularly affecting their right to education and health.

## EDUCATION

Homophobic bullying represents one of the major obstacles in the access to education for LGBT people, especially children. In Colombia, the Constitutional Court determined that higher education institutions could not discriminate, among other grounds, on the basis of sexual orientation, and ordered the inclusion of sexual and gender diversity in schools codes of conduct and, most notably, in the curriculum of all national schools.<sup>852</sup> In Chile, local sources reported that a teacher was dismissed after being accused of having bullied a lesbian student. This is in accord with UNICEF's Position Paper 9 concerning the rights of LGBT youth and their families.

Less encouraging news came from the United States, where there has been a rise in applications filed by religiously affiliated colleges for exemptions from federal anti-discrimination laws, which allow institutions to openly discriminate against LGBT students. Furthermore, in Canada, a group of religious parents organised the 'Parents & Students on Strike' to protest against the new comprehensive sexuality education curriculum in Ontario, which included lessons on sexual diversity.

## PHYSICAL AND MENTAL HEALTH

The region has seen considerable progress in the fight against so-called conversion "therapies." Bans against these practices were enacted in the United States<sup>853</sup> and Canada.<sup>854</sup> In this line, a court in New Jersey ruled against a Jewish group offering these questionable "treatments." Public prosecutors in Brasilia had to interrupt an ongoing training course on the topic. In Ecuador, the CEDAW Committee stated that despite the efforts made by the government, the practice of "de-homosexualisation" in clinics still continues.<sup>855</sup>

In Brazil, the Ministry of Health and the University of Brasilia launched a major study to assess the access to health services by lesbian and bisexual women. In Argentina, the ban on LGBT blood donors was definitively lifted by means of a resolution issued by the Ministry of Health. In the

<sup>851</sup> See the Committee's Concluding observations on Chile (E/C.12/CHL/CO/4), Venezuela (E/C.12/VEN/CO/3) and Paraguay (E/C.12/PRY/CO/4).

<sup>852</sup> Decision T-478/15. This judicial decision determined reparative measures in the case of Sergio Urrego, a 16 year old student who attended a Catholic school and was subject to homophobic bullying by school administrators after they had discovered his relationship with his boyfriend. The full-text version of the decision is available at: [http://www.corteconstitucional.gov.co/inicio/T-478-15%20ExpT4734501%20\(Sergio%20Urrego\).pdf](http://www.corteconstitucional.gov.co/inicio/T-478-15%20ExpT4734501%20(Sergio%20Urrego).pdf). See also: Decision T-141/15, available at: <http://www.corteconstitucional.gov.co/relatoria/2015/t-141-15.htm>

<sup>853</sup> Bans on conversion therapy were enacted in Illinois and Oregon, and in the city of Cincinnati. Furthermore, the Substance Abuse and Mental Health Services Administration (SAMHSA) issued a report calling to put an end to these practices.

<sup>854</sup> The ban was enacted in the Canadian province of Ontario. Further efforts to ban these practices were reported in the province of Manitoba. Moreover, a member of the Conservative Party was expelled after he openly supported conversion therapies.

<sup>855</sup> The Committee also urged Ecuador to ensure the implementation of legislation that prohibits these practices (CEDAW/C/ECU/CO/8-9).



United States, the Food and Drug Administration modified its policies on blood donation, but local activists have stated that the new policy in place is still discriminatory.<sup>856</sup> In Peru, even though the Ministry of Health officially stated that LGBT people were not barred from donating blood, the rejection of a lesbian woman because of her sexual orientation prompted the intervention of the Ombudsperson.

## RIGHT TO WORK AND SOCIAL SECURITY BENEFITS

Several countries have seen major achievements in the protection of lesbian, gay and bisexual people in the labor market. In the United States, the Equal Employment Opportunity Commission (EEOC) issued a landmark decision declaring that discrimination based on sexual orientation falls within the scope of existing legislation prohibiting discrimination based on sex.<sup>857</sup> In Mexico, the National Council against Discrimination (Conapred) issued a directive on standards for labor equality and non-discrimination expressly including sexual orientation as a prohibited ground of discrimination.<sup>858</sup>

The International Labor Organization (ILO) and the Argentine LGBT Federation launched a study on discrimination in employment against LGBT people in Argentina. In Chile, a court ordered the city council of Talca to compensate three former employees who had been dismissed because of their sexual orientation. The decision also determined that officials of that city council had to receive specific training in human rights. Furthermore, Fundacion Iguales and the Chilean Ministry of Labor launched a major survey to assess the situation of LGBT people in the workplace.

The UN Special Rapporteur on violence against women indicated that, in Honduras, lesbian women are often bullied, harassed or overlooked for promotions, and may even be denied employment due to their style of dress. Moreover, the IACHR admitted a case presented by a Chilean teacher who was allegedly dismissed from a Catholic school for being a lesbian.<sup>859</sup> For its part, the Inter-American Court of Human Rights held a public hearing in a case concerning the rights of same-sex partners to have access to pension rights.<sup>860</sup>

In Cuba, celebrations on the Day against Homophobia and Transphobia, which were led by Mariela Castro, focused on the right not to be discriminated at work. In the United States, Louisiana's governor-elect, John Bel Edwards, confirmed he will issue an executive order outlawing anti-LGBT discrimination for State employees and government contractors.<sup>861</sup>

<sup>856</sup> In fact the FDA lifted its 32-year-old lifetime ban on blood donations from gay and bisexual men, but has established a bar which prevents men who have had sex with another man in the previous year from donating.

<sup>857</sup> This is the current EEOC interpretation of Title VII of the Civil Rights Act of 1964. See *David Baldwin v. Department of Transportation*, EEOC Appeal No. 120133080 (July 15, 2015), available at: <http://www.eeoc.gov/decisions/0120133080.pdf>

<sup>858</sup> The National Institute of Women (Inmujeres) and the Department of Labor and Social Security (STPS) also took part in the preparation of the document. The directive can be downloaded from: <http://www.economia-nmx.gob.mx/normas/nmx/2010/nmx-r-025-scfi-2015.pdf>

<sup>859</sup> The admissibility report can be downloaded from <http://www.oas.org/es/cidh/decisiones/2015/CHAD1236-08EN.pdf>

<sup>860</sup> The I/A Court is expected to issue its decision on the merits of the case in 2016 (Case *Angel Alberto Duque v. Colombia*). The hearing is available at: <https://vimeo.com/137318897>

<sup>861</sup> It bears mentioning that Louisiana is one the states in which it is still legal to fire an employee based on their sexual orientation.

## HOUSING

Access to adequate housing has been reported in the Americas as one of the main challenges faced by lower-income lesbian, gay and bisexual people, especially youth.

In Jamaica, homeless LGBT youth were violently evicted by a mob from the sewers in which they had been forced to live for the past two years.<sup>862</sup> In Venezuela, LGBT families started a protest to demand their inclusion in the National Housing Plan. In the United States, the Urban Institute issued a study on the living experiences of almost 300 LGBT homeless youth who engage in sex in exchange for food and shelter in New York City. Almost two thirds stated that they were frequently subject to police abuse and to invasive searches in public areas.

Access to housing is also a major challenge in the context of human mobility. In 2015, the UN Special Rapporteur on the human rights of internally displaced persons highlighted the lack of access to shelter protection for LGBTI individuals in Haiti.<sup>863</sup>

## CONCLUSION

Lesbian, gay and bisexual activists in the Americas are more active than ever before, and 2015 proved to be an effervescent year in the fight for equality. The courage and determination showed by the first and second generations of leaders throughout the hemisphere has inspired many others who are now standing up for their rights, even in countries where their love for others and their identities are criminalised or otherwise rejected with violence and disdain. There is evidence of alliances and strong support for our battles by civil society at large, and particularly by human rights activists in various fields.

In 2015, far too many have continued to pay with their own lives the price of confronting our societies and fighting for a dignified life. Backlash for the victories of equality came in the form of newly enacted restrictive legislation, religious exemptions, and even more discrimination and violence. However, the struggle goes on.

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<sup>862</sup> The mob attack took place even when a local court had ruled that loitering in a public sewer was “not a problem,” as they are technically public places.

<sup>863</sup> A/HRC/29/34/Add.2