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Mexico

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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INTRODUCTION

The memo addresses human rights situation and the available state protections for LGBT and their enforcement in Mexico. It also addresses the availability of Internal Flight Alternatives (IFA) in Mexico. It incorporates case law that reflects the perception of state protections, their enforcement and the availability of IFAs in the country in Canadian Federal Court and tribunal decisions.

Section 1 gives an overview of the discrimination and violence faced by LGBT persons in Mexico and Mexico City and addresses the phenomenon of underreporting of hate crimes against that community. It then gives a summary of the Federal Court jurisprudence and the IRB tribunal decision history on these topics.

Section 2 gives a summary of available state protections, on state or local and federal levels, for LGBT Mexicans. It canvasses Mexican legislation (including civil codes and state anti-discrimination laws) and constitutional documents.

Section 3 addresses the issue of whether such state protections are actually enforced. It delineates the structure of the Mexican police system and then details the corruption of the public sector and how that corruption bears on the LGBT community. The report then summarizes Federal Court and IRB tribunal decisions on these matters.

Section 4 addresses the issue of the Internal Flight Alternative including factors affecting the viability of IFAs for vulnerable individuals, in particular the LGBT community. The section also summarizes the Federal Court and IRB's treatment of the IFA with regards to Mexico's LGBT community and the standard that has been established by the Court. This component of the report also discusses Mexico City and Guadalajara and the issue of their viability as Internal Flight Alternatives.

Section 5 is a summary of a Spanish language report by Mexico City D.F.'s Commission for Human Rights which bears light on the human rights violations against the LGBT community that have occurred at the hands of state and non-state actors in the city.

Section 6 provides a summary of government reports on the human rights situation of LGBT persons in Mexico and addresses the issue of sexual violence committed by police. Section 7 addresses the same issues, summarizing reports by non-government organizations.

Section 8 summarizes the scholarship on LGBT issues and highlights issues regarding violence against transsexual sex workers, the specific human rights violations encountered by LGBT youth, and violence against gays and lesbians in Mexico City.

Section 9 gives a highly selective overview of media reports concerning the violence against LGBT persons in Mexico initiated by state and non-state actors.

1. DISCRIMINATION AND VIOLENCE FACED BY LGBT PERSONS IN MEXICO AND MEXICO CITY

General Comments

The Consejo Nacional Para Prevenir La Discriminación (CONAPRED) is a state organ created by the Mexico Federal Law to Prevent and Eliminate Discrimination. According to a 2005 study by CONAPRED, 94.7% of Mexican homosexuals face some degree of discrimination and 43% of homosexuals surveyed claimed to have been the victim of a discriminatory act within the last year.¹ In the survey, 41% of LGBT respondents claimed some improvement over the past five years, 34% claimed the situation had worsened and 25% claimed it had not changed.² 55.7% of non-homosexual respondents of the CONAPRED survey stated the authorities “should defend the rights of homosexuals wishing to live in a community where they are not welcome”.³

Mexico’s Comisión Ciudadana Contra los Crímenes de Odio pro Homofobia (CCCOH) has asserted that, between 1995 and 2005, there were 332 killings inspired by homophobia in Mexico. Of these, 30 took place in 2004: 11 in Mexico City, 5 in Mexico state, 4 in Yucatan, 3 in Colima, two in Veracruz and one in each of Baja California, Chiapas, Chihuahua, Michoacan and Quintana Roo. This organization’s statistics, however, may be inaccurate since they are based on newspaper articles, not government statistics. The government, however, does not have statistics relating to homophobic crime.⁴

Underreporting

According to the Centro Nacional para la Prevención y el Control del VIH/SIDA, victims of violence premised on homophobia are unlikely to report due to their lack of confidence in a law enforcement sector crippled by “institutionalized homophobia.”⁵ Public agencies also tend to mischaracterize homophobic crimes as other crimes. The killing of a homosexual activist in June 2005, for example, was determined by the Queretaro AG to be the “result of a common assault and not homophobia.”⁶ A different angle in investigation, some have asserted, might have shown that the crime “was a reprisal for [the victim’s] efforts to combat homophobia in the Queretaro justice system.”⁷

As estimated 75%, according to the Comisión Ciudadana contra Crímenes de Odio, of

¹ Immigration and Refugee Board of Canada, *Issue Paper: Mexico Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation*, February 2007, available at: <http://www.unhcr.org/refworld/docid/46d2ed512.html>, s. 51.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

murders of a homophobic nature go unreported. CONAPRED asserts that 290 LGBT persons were murdered between 1995 and 2003. 126 of these murders occurred in Mexico City, 62 in Mexico state, 37 in Veracruz and 15 in Michoacán.⁸

Case Law: Federal Court

- ***Quinatzin v. Minister of Citizenship and Immigration*** (2008 FC 937)
Application denied for judicial review denied. The IRB, in reviewing state protection for both individuals targeted by corrupt police agents and homosexuals by considering legislative reforms, new laws and programs and the effectiveness of these measures, made a thorough investigation into state protections in Mexico.
- ***Chagoya c. Canada* [2008] A.C.F. No. 908**
The IRB was unreasonable in finding that homosexuals have the benefit of state protection in Mexico because it did not address documentary evidence to the contrary.

Case Law: Tribunal Decisions

- **Re. X, 2008, RDP File No. TA8-06879**
Several changes in Mexico show growing tolerance of homosexuality, especially in Mexico City and tourist destinations like Cancun and Acapulco. The Federal Law to Eliminate and Prevent Discrimination attests to such changes as does the growing participation of homosexuals in politics.

2. AVAILABLE STATE PROTECTIONS FOR LGBT MEXICANS

Constitutional Protections for LGBT Mexicans

There may be constitutional protections for the rights of LGBT Mexicans under the *Constitución de los Estados Unidos Mexicanos*. Article of 1 of the Constitution prohibits “all discrimination motivated by ethnic or national origin, gender, age, disability, social conditions, health, religion, conscience, preferences [*las preferencias*]” etc.⁹ It is, however, unclear as to what is meant by “preferences.” A Special Report on the Violations of the Human Rights of Sexual and Gender Minorities by Mexico’s Federal District Commission of Human Rights notes this ambiguity in the Mexican Constitution.¹⁰ There has, however, been a move, in the Salón de Sesiones de la Cámara de Diputados (17 April 2007) to make more explicit a prohibition against discrimination based on sexual preferences.¹¹

⁸ Immigration and Refugee Board of Canada, *Mexico: Selected Issues of Internal Flight Alternatives (July 2003 - July 2005)*, 1 October 2005, available at: <http://www.unhcr.org/refworld/docid/439ed5c917.html>, s. 3.4 [*Mexican IFAs*]

⁹ *Constitución Política de los Estados Unidos Mexicanos*, online: Constitución Política de los Estados Unidos Mexicanos <<http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>>.

¹⁰ Comisión de Derechos Humanos del Distrito Federal, *Informe especial sobre violaciones a los derechos humanos por orientación o preferencia sexual y por identidad o expresión de género, 2007-2008* (Mexico D.F.: Comisión de Derechos Humanos del Distrito Federal, 2008) at 18 [*Informe Especial*]

¹¹ *Ibid.* at 49-50.

Guerrero State Civil Code

Article 2 of the Mexico City Civil Code (*Código Civil para el Distrito Federal*) states that “no person may be denied a service or benefit to which he is entitled nor shall that person’s exercise of his rights be restricted” on the basis of sexual orientation.¹² The equivalent passage in the Guerrero State Civil Code does not expressly enumerate sexual orientation as a protected category.¹³

Federal Law to Prevent and Eliminate Discrimination

Mexico passed, 11 June 2003, *Ley Federal para Prevenir y Eliminar la Discriminación*. Article 4 protects against discrimination based on sexual orientation.¹⁴ Article 9 prohibits all discriminatory practices which aim to impede or annul the recognition or exercise of rights and “la igualdad real de oportunidades.”¹⁵ The following areas are potential grounds for discrimination according to the Law:

- Education
- Employment
- Reproductive rights
- Medical Care
- Participation in Civic/Political Life
- Exercise of property rights
- Access to and enforcement of Justice
- Free choice of spouse or partner
- Promotion of violence and ridicule in media
- Free expression of ideas, thought, conscience
- Access to information
- Health
- Food, Housing, recreation, medical care
- Access to public space
- Hatred, Violence, Slander, Persecution
- Physical or psychological abuse

3. ENFORCEMENT OF STATE PROTECTIONS

Mexico has a number of agencies and offices that are seen—by IRB panels – as alternative sources of state protection if the notoriously corrupt local police are unable to provide it.

¹² *Código Civil para el Distrito Federal*, online: Código Civil para el Distrito Federal <<http://www.testamentos.gob.mx/Documentos/ccivil/9codciv.pdf>>.

¹³ *Código Civil del Estado Libre Y Soberano De Guerrero*, online: Código Civil del Estado Libre Y Soberano De Guerrero <<http://www.ordenjuridico.gob.mx/Esatal/GUERRERO/Codigos/GROCOD01.pdf>>.

¹⁴ *Ley Federal para Prevenir y Eliminar La Discriminación*, online: Ley Federal para Prevenir y Eliminar La Discriminación <<http://www.cddhcu.gob.mx/LeyesBiblio/pdf/262.pdf>>.

¹⁵ *Ibid.*

There is ample evidence, however, that these alternate agencies are ineffective and often equally corrupt, and thus are not viable sources of state protection.

There are three levels of police in Mexico – local, state and federal. The federal police are divided between the Federal Agency of Investigation (AFI), formerly the federal judicial police, under the Federal Attorney General’s Office and the Federal Preventative police (under the Secretariat of Public Security). IRB Members have questioned claimants extensively on why, when local police were seen as ineffective, they did not approach the federal police for protection.

In addition, there are two mechanisms in Mexico dedicated to curbing police corruption: Criminal investigations by the Public Prosecutor’s Office and the Human Rights Commissions (both state and federal).

Corruption of the public sector

Public sector corruption is a source of concern for authorities: municipal and state-level law enforcement officials tend to have little education, poor training and little remuneration. Such factors increase a susceptibility to bribery and corruption.¹⁶ Several reforms, however, are underway to combat corruption in federal institutions including a registry of public security personnel detailing misconduct of agents.¹⁷ The federal Secretaría de Seguridad Pública is also attempting to encourage the reporting of crime by citizens and a stronger faith in public security agencies through a Citizen’s Information and Services Network offering psychological assistance, crisis intervention, legal guidance, medical attention, social assistance and referrals to public agencies. A Services for Victims of Crime Branch, offered by the Procuraduria General de la Republica, to provide support to victims of crime.¹⁸ Statistics show the Mexico City Centre handled, from August 2004 to November 2006, 5,200 cases; the Acapulco centre, from November 2005 to November 2006, handled 2,970 cases.¹⁹ Although the Comision Nacional de Derechos Humanos can investigate complains and mediate conflicts between complainants and allegedly abusive public authorities, its is “expressly prohibited from reviewing judicial decisions, labour disputes and acts and decisions of electoral officials. It has no legal power to compel government agencies to provide information to it [nor are its resolutions] binding.”²⁰ The Consejo Nacional para Prevenir la Discriminacion (CONAPRED) is a federal institution “which investigates allegedly discriminatory acts and applies administrative measures where necessary to remedy particular situations.”²¹

¹⁶ Immigration and Refugee Board of Canada, *Issue Paper: Mexico Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation*, February 2007, available at: <http://www.unhcr.org/refworld/docid/46d2ed512.html>, s. 2.2

¹⁷ *Ibid.*

¹⁸ *Ibid.*, s. 2.3.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

Public Sector Corruption in relation to the LGBT community

A substantial share of reports of discrimination towards LGBT persons are against “agentes de seguridad pública y procuración de justicia.”²² The CDHDF found that LGBT persons expressing their emotions or gender identity in public were frequently victim to “insultos, malos tratos y abusos”; trans persons were particularly vulnerable.²³ Law enforcement officials, according to CDHDF reports, have used excessive force in the arrest of LGBT persons or improper and incorrect [“abusiva o incorrecta”] treatment of LGBT victims of crime by officials who should provide care.²⁴ 11% of Mexico City’s LGBT population, according to one survey, has been victim of threats, detention and extortion by police due to their sexual orientation.²⁵ These abuses by public servants towards LGBT persons encompass “el uso de un lenguaje insultante, sexualmente explícito, y las amenazas de golpes y violencia física hasta la violación.”²⁶

In a number of refugee cases before Federal Court, LGBT claimants have noted the failure of local police to take the complaint seriously or the involvement of the police in persecution. This has been dispositive in an application for judicial review.

Case Law: Federal Court Decisions

- ***Chagoya v. Canada* [2008] A.C.F. No. 908**
IRB was unreasonable in finding that homosexuals have the benefit of state protection in Mexico because it did not address documentary evidence to the contrary.
- ***Ramirez v. Canada* [2008] F.C.J. No. 1028**
The RPD was unreasonable in finding that the homosexual claimants could avail themselves of state protection, since it did not address their testimony regarding multiple fruitless attempts to get help from authorities in different localities.
- ***Soberanis v. Canada* [2007] F.C.J. No. 1279**
IRB erred in finding that the claimant had not sought out state protection, when he had attempted to go to the police and had his complaints derided and ignored. The IRB’s failure to consider the applicant’s experience with the Mexican police makes it impossible to say what the Board would have concluded about the availability of state protection for homosexuals.
- ***Parrales v. Canada* [2006] F.C.J. No. 624 April 21, 2006.**
Considering the extreme abuse the claimant was victim to, these personal circumstances/experiences should have been considered in the IRB’s decision.
- ***Garcia v. Canada* F.C.J. No. 1008 June 3, 2005**

²² Comisión de Derechos Humanos del Distrito Federal, *Informe especial sobre violaciones a los derechos humanos por orientación o preferencia sexual y por identidad o expresión de género, 2007-2008* (Mexico D.F.: Comisión de Derechos Humanos del Distrito Federal, 2008) at 18 [*Informe Especial*]

²³ *Ibid.* at 55.

²⁴ *Ibid.*

²⁵ *Ibid.* at 58.

²⁶ *Ibid.* at 55.

Court overruled IRB denial of Garcia's refugee claim. It was found that the evidence referred to by the Board did not directly address the incidence of violent crime against gays and lesbians in Mexico City. The central issue in the case was whether, given the fact that he was an openly gay man, Garcia would be able to live safely in Mexico City. Evidence relating to homophobic crimes against gay men in that city (and specifically a 1998 report prepared by the Citizen's Commission Against Homophobic Hate Crimes) should have been seriously considered by the Board in their decision.

However, a claimant is obliged to seek out alternative avenues of state protection before seeking international alternatives:

- ***Ouinatzin v. Canada* [2008] FC 937**
It was reasonable for IRB to find that there are reasonable alternative avenues of state protection. Where the agents of persecution are the police, the Board must consider the reasonableness in asking the applicant to approach the same police force for protection. The applicant, however, should attempt to seek state protection before seeking international protection even where the agents of persecution are police themselves.
- ***Soberanis v. Canada* [2007] F.C.J. No. 1279**
The failure of police at a local level does not necessarily answer the question of state protection

Case Law: Tribunal Decisions

- **Re. X (2008) RDP File No. TA8-06879**
Documentary evidence shows the Mexican government is implementing corruption reforms through new recruiting training and vetting measures. The Secretariat of Public Administration, moreover, offers services to citizens wishing to report acts of corruption such as bribery. These services are easily accessible. The panel was thus not persuaded that there was a lack of action by federal authorities against governmental corruption.
- **Re. X, (2007) RPD File No. VA6-00539**
A claimant fears the state authorities throughout Mexico, not just because he is a gay man, but because he is a gay man with a history of arrest, abduction, and mistreatment, at the hands of the authorities, of a degree of what can only be called savagery, amounting to cruel and unusual treatment or punishment, and torture, as that is meant in the *Convention Against Torture*. He is in the system with a history of attempted complaints against the police, and a history of having been brutally "warned". Claimant was kidnapped and raped by judicial police.

Public Prosecutor's Office

Please see Comments in "5. Mexico City as an Internal Flight Alternative" for more commentary.

A number of federal court cases have documented the utter ineffectiveness of filing a complaint with the Public Prosecutor's Office.

- ***Zepeda v. Canada* [2008] F.C.J. No. 625**
Discussed above, the Court found that the Office of the Attorney General (PGR)) did not constitute an avenues of protection *per se* because it did not have enforcement power.
- ***Razo v. Canada* [2007] F.C.J. No. 1610**
Discussed above, the Federal Court found that the IRB's decision that state protection was available in the form of the PGR (Federal Attorney General's Office) to be patently unreasonable. Although the PGR is nominally an agency of state protection, it does not provide actual and adequate protection.
- ***Hernandez v. Canada* [2007] F.C.J. No. 1563**
It was patently unreasonable to contend that the applicants would have received state protection in Mexico. After trying unsuccessfully to file a report with the Public Ministry, the principal applicant began receiving death threats. The applicants couldn't be expected to risk their lives in further steps to seek out state protection.
- **Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system**
Amnesty International USA, 2 October 2007
<http://www.amnestyusa.org/document.php?lang=e&id=engamr410022007>
At page 21, notes "the process for holding officials to account is extremely slow and inadequate," and documents failure of this office to properly investigate police colleagues.

4. MEXICO AND INTERNAL FLIGHT ALTERNATIVES

Conditions for resettlement

In a report on Mexican IFAs, the IRB cites comments by a representative of the Montreal-based group Rights and Democracy that an individual's financial situation (including the cost of migration and the presence of family who can provide lodging) is determinative for a Mexican's mobility.²⁷

Factors affecting the viability of an IFA

The ability to re-settle may not grant complete security "if the reason for [the citizen's] displacement is unknown."²⁸ The security of an IFA may be undermined by failures to ensure the confidentiality of information. The *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* protects personal data collected by government agencies. Although the law has had some positive effects, "local authorities responsible for enforcing the law frequently disregard it."²⁹ Voter's Registration Card, for example, is issued by the Instituto Federal Electoral which has suffered "problems with confidentiality." All Mexicans are obliged to keep an updated address on this registry and the card itself is essential to many common transactions (banking etc.).³⁰ Because,

²⁷ *Mexican IFAs*, *supra* note 10, s. 4.1.

²⁸ *Ibid.*

²⁹ *Ibid.*, s. 4.2.6.

³⁰ *Ibid.*, 4.2.2

moreover, information in this database is poorly protected, “it is easy to find someone in Mexico.”³¹

IFAs and the LGBT community

The problems of vulnerable groups like LGBT, moreover, are highly linked with “the fragility of the state of law, the lack of professionalism in the police forces and the existence of possibly delinquent networks that could eventually represent threats for these individuals.”³²

Case Law: Federal Court Decisions

The two-prong test for the availability of an IFA:

- 1) The Board must be satisfied that there is no serious possibility of persecution in the part of the country in which the IFA exists.**
- 2) Would it be unreasonable in all of the circumstances, including those particular to the claimant, for the claimant to seek refuge there?**

- ***De La Rosa v. Canada* [2008] F.C.J. No. 98**

Numerous decisions of the Federal Court “upholding as reasonable or not patently unreasonable IRB findings that Mexico City is an IFA for most gays and lesbians in Mexico. The burden of proof rests with the claimant to overcome the presumption that Mexico City is a reasonable IFA for those fleeing persecution.

Case Law: Tribunal Decisions

In the following files, claimants have adduced evidence that rebuts the presumption of Mexico City as an IFA:

- ***Re. X* (2007) RPD File No. VA6-00539**
Because 1) the claimant was attacked by persons who may have been members of either a national police force or a police force with national connections and 2) most homophobic murders occur in the Mexico City, the Federal District would not be a suitable IFA.
- ***H.W.X. (Re)* [2007] R.P.D.D. No. 4**
Documentary evidence and the claimant’s testimony both indicate that homosexuals face persecution in Mexico; that despite recent positive initiatives, state protection for homosexuals in Mexico remains woefully inadequate; that CONAPRED, the state public body that deals with cases of discrimination, has limited authority and no ability to impose sanctions; and that IFA is not available because the claimant suffered persecution in Mexico City, the most tolerant area of the country.
- ***H.K.T. (Re)* [2007] R.P.D.D. No. 28**
The claimant, who lived in Guadalajara, experienced persecution by the police there, and received no assistance from the state’s Human Rights Commission. The panel

³¹ *Ibid.*

³² *Ibid.*, s. 4.1.1.

writes : “Homophobia and discrimination against gay and lesbian people in Mexico is systematic, institutional and brutal.” “When considering the situation of a gay man who was attacked by people who may have been members of either a national police force, or a police force with national connections, and given the evidence that most homophobic murders are committed in Mexico City, the panel does not find that Mr. XXXXX would have an internal flight alternative in the Federal District.”

- ***X.D.W. (Re) [2006] R.P.D.D. No. 1***
The claimant, living in Mexico City, experienced “incidents of severe human degradation,” including sexual assault, with the main aggressor being a member of the judicial police. He attempted to relocate to Guadalajara and was tracked down by his aggressor, likely using information from national police databases; he was apprehended by police officers in a PGR (Federal Attorney General's Office) car and brought forcibly back to Mexico City, where the abuse continued. The panel found that (1) the claimant would face persecution for being gay if he returned; (2) the claimant would not receive state protection because his main assailant was in the judicial police force; and (3) that the claimant had unsuccessfully attempted IFA to Guadalajara.
- ***V.Z.D. (Re) [2001] C.R.D.D. No. 37***
The claimant and her lesbian partner were abused, harassed and threatened by the claimant’s ex-husband and his paid agents, who were police officers, and one occasion wore t-shirts with the PGR (Federal Attorney General’s Office) emblem. The panel found that the ongoing, severe abuse the claimants experienced, including at the hands of the police, ruled out the possibility that state protection was available to them. Since the claimants had tried relocating and been tracked down, the panel concluded no IFA was available to them.
- ***A.X.T. (Re) [1998] C.R.D.D. No. 243***
The claimant who lived in Guadalajara experienced ongoing persecution for being homosexual, and was falsely accused and arrested on one occasion after being identified as a homosexual, then sexually assaulted by police officers. The psychologist’s report indicated that he exhibited PTSD symptoms. In light of his psychological state, IFA was not a reasonable option.
- ***Q.U.Q. (Re) [1997] C.R.D.D. No. 242***
The claimant was raped, threatened, and harassed on an ongoing basis by a lover’s husband. Following the Guidelines for Gender-Related Persecution, the panel found that she had good reasons not to avail herself of police protection. The panel gave benefit of the doubt to the claimant that IFA to Mexico City is not a safe option, because the presence of pro-gay organizations in the city cannot compensate for a lack of state protection, and it’s unclear whether the police’s attitude towards a lesbian would be any different there.
- ***N.K.O. (Re) [1996] C.R.D.D. No. 238***
The claimant experienced ongoing harassment for being homosexual and came to Canada after being detained and interrogated by police officers. The panel found that his fear of persecution was well-founded and that there was documentary evidence that the authorities participate in the persecution of homosexuals.
- ***V.L.W. (Re) [1996] C.R.D.D. No. 112 August 21, 1996***

Convention refugee status conferred on homosexual woman from Aguas Calientes. Claimant faced persecution based on her sexual identity and was successful in presenting her “problem” as not one of local persecution, but a “national cultural problem”. Cites culture of “machismo”, which is particularly negative towards Lesbians. In their decision the Board finds that because Mexico does not provide protection to its homosexual citizens and because “this appears to be a national rather than a regional problem”, the claimant does not have a reasonable IFA in Mexico.

The IRB has found that an IFA was available in the following scenarios

- **Re. X (2008) PRDP File No. TA6-14542**

A person may flee one state for another without fear of being tracked down. Documentary evidence suggests tracking a person in Mexico is not as easy as the claimant suggests: central databases are not widely used, information is not generally shared between states and court orders are required before information can be accessed. The HIV positive claimant feared former partner’s brother who had previously assaulted him.

It would not be unreasonable for the claimant to re-locate to Mexico City because the claimant has transferable skills, a post-secondary education and greater occupational flexibility. It was also possible for the claimant to receive adequate medical treatment and that Mexico did not withhold such treatment to homosexuals. The fact that two medications were not available does not undercut the viability of the health services to which the claimant has access in his country.

- **Re. X (2008) RDP File No. TA8-06879**

If claimant fears persecution by a local homophobic group whose activities are confined to a certain area, there may be an IFA.

Mexico City passes the two-prong IFA test. Mexico City has a vibrant gay culture and a pride parade that attracted, in June 2007, 220,000 marchers. There is no indication that the persecuting group operates outside the area from which the claimant comes or that it has influence in Mexico City. His skills, moreover are transferable to this area.

Mexico City as an IFA

Mexico City has 100 businesses that are specifically geared toward LGBT clientele and hosts an annual gay parade. However, by virtue of the fact that the LGBT population is higher in the Federal District than anywhere else in Mexico, the highest number of murders of gay persons occurs here. About 30, every year, are murdered solely on the basis of their sexual orientation. Most murders go “unsolved and unpunished.”³³

The D.F. also annually receives about 30 complaints from persons living with HIV/AIDS. Since the cases of discrimination are handled by police who do not enforce laws, violations may be underreported.³⁴

³³ *Ibid*, s. 5.5

³⁴ *Ibid*.

Guadalajara as an IFA

Although there were a number of venues catering to the LGBT community, the state of Jalisco (in which Guadalajara is located) is one of the most frequently cited sites of discrimination against homosexuals.³⁵ A report by *La gaceta* stated that, “despite Guadalajara’s reputation as one of the most conservative cities in Mexico, there has been more societal openness in recent years toward gay men and lesbians”.³⁶

A gay rights activist has claimed, in an April 2006 article published in the Guadalajara-based *Público* and republished by the Jalisco State Human Rights Commission, “homosexuals who frequent bars in the neighbourhood of Pedro Moreno-Chapultepec-Parque Revolución were among the groups most susceptible to arbitrary arrest by the police”.³⁷ Police in Guadalajara have also threatened to publicize the sexual identity of detainees, even on television.³⁸ There have also been reports pressure by municipal authorities to relocate gay venues to the city’s periphery and a failure by the city to recognise LGBT venues.³⁹

There are a number of advocacy and support groups for various segments of the LGBT community in Guadalajara and Jalisco.⁴⁰

5. MEXICO CITY AS AN IFA: SUMMARY OF THE COMISIÓN DE DERECHOS HUMANOS DEL DISTRITO FEDERAL (CDHDF)’S INFORME ESPECIAL SOBRE VIOLACIONES A LOS DERECHOS HUMANOS POR ORIENTACIÓN O PREFERENCIA SEXUAL Y POR IDENTIDAD O EXPRESIÓN DE GÉNERO, 2007-2008

The Comisión de Derechos Humanos Del Distrito Federal (CDHDF) operates under the *Ley de la Comisión de Derechos Humanos del Distrito Federal* and is “un organismo público autónomo con personalidad jurídica y patrimonio propios que tiene por objeto la protección, defensa, vigilancia, promoción, estudio, educación y difusión de los derechos humanos, establecidos en el orden jurídico mexicano y en los instrumentos internacionales de derechos humanos.”⁴¹

³⁵ Immigration and Refugee Board of Canada, “Mexico: Situation of homosexuals in Guadalajara and whether there are support or advocacy groups acting on their behalf,” (5 June 2008) MEX102816.E online:

<<http://www.unhcr.org/refworld/docid/48a3028933.html>.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Comisión de Derechos Humanos del Distrito Federal, *Ley de la CDHDF*, Comisión de Derechos Humanos del Distrito Federal, online: <<http://www.cd hdf.org.mx/index.php?id=leycap1>>.

The CDHDF Special report on LGBT issues aims to “aid in creating a more just society based on the inclusion of sexual minorities under a principle of equal citizenship”⁴² and gives an assessment of the conditions faced by LGBT persons in the Federal District, which the IRB and Canada’s Federal Court consistently deems an IFA.

General statistics on human rights violations of LGBT persons in Mexico City

The CDHDF Report, citing the Comisión Ciudadana contra los Crímenes de Odio por Homofobia, asserts that from 1995 to 2006 420 cases of homophobic hatred were reported, 148 of which occurred in Mexico City.⁴³ The CDHDF, from January to December 2007, itself has received 47 complaints of violations of human rights by LGBT persons. 27% of these were related to equality before the law; 15.7% to the right to honour and dignity; 13.9% to the right to personal integrity; 13.9% to the deprivation of freedom, 8.7% to the right of legal security, 6.1% to the right to personal liberty and security, 4.3% to the right of movement and residence; 4.3% to the rights of the victim; and, .9% pertaining to freedom of expression, standard of living, employment, rights to due process etc. From January to August 2008, the CDHDF received 39 complaints of which 39% were related to deprivation of liberty; 22.2% to equality before the law; 9.9% to rights to honor and dignity; 6.2% to rights of legal security; 4.9% to the right to human treatment; 3.7% to the rights to children [“los derechos de la ninez”]; 2.4% related to rights to health, work and women’s rights; and 1.2% related to the right to liberty, petition and assembly.⁴⁴

A National Survey of Discrimination in Mexico conducted by CONAPRED in May 2005 found that 48.4% of Mexicans would not be willing to allow gay persons to enter their homes. A survey of homosexual perceptions asked participants to rate on a scale of 0-10 the degree of discrimination they felt with the following results: Schools, 7.45; Workplace, 7.61; Hospitals, 6.66; Family Life, 6.55. Two in three respondents felt their rights were not respected and one in two respondents felt rejected by society.⁴⁵

“Violencia estructural”: Social practices in Mexico City limiting the efficacy of antidiscrimination laws in relation to the LGBT community

Although, moreover, Mexico City was one of 10 entities, which criminally sanctioned discrimination based on sexual orientation, social practices have limited the efficacy of such sanctions:

la discriminación y la violencia por orientación sexual e identidad de género son las manifestaciones más comunes del odio y el desprecio, los espacios sociales más comunes de este tipo de discriminación son el ámbito laboral, educativo, religioso y en los espacios públicos donde intervienen los cuerpos de

⁴² *Informe especial*, supra note 22 at 5.

⁴³ *Ibid.* at 9.

⁴⁴ *Ibid.* at 10.

⁴⁵ *Ibid.* at 19.

seguridad pública.⁴⁶

The CDHDF, based on the complaints that it has received within the Federal District of Mexico City, has identified the following public authorities as being involved in “systematic violence” [“violencia estructural”] against LGBT persons: the General Secretariat of the Federal District, the Attorney General of the Federal District, the Metro Transportation System, the Legal Advisor and Legal Services of the Federal Districts and the Ministry of Health of the Federal District.⁴⁷ Although recommendations made by the CDHDF to the Metro in 2005 were rejected, a recommendation issued to la Dirección General de Prevención y Readaptación Social to permit “la visita íntima” for same-sex partners in 2007 was adopted in prisons run in the Federal District.⁴⁸

The family as a source of LGBT rights abuse in Mexico City and failure of relevant public agency to take action

The CDHDF Report identified the family as a potentially dangerous source of abuse to LGBT persons; the Report traced many of these abuses to a cult of machismo.⁴⁹ The Report has recommended that the Sistema para el Desarrollo Integral de la Familia de Distrito Federal (DIF-DF) implement measures to prevent against such abuses. However, the Report notes that there are no programs for this disadvantaged segment of the population.⁵⁰

The education system as a source of LGBT rights abuse in Mexico City

The school system is also a site of discrimination; teachers and school authorities frequently participate in these behaviors by failing to address bullying and harassment.⁵¹ The Ministry of Education of the Federal District does not provide training programs for staff on non-discrimination and specifically on non-discrimination with regards to sexual orientation or gender identity.⁵²

The employment sector as a source of LGBT rights abuse in Mexico City

In the workplace, LGBT persons are subject to verbal, psychological and physical violence.⁵³ The Federal Labour Law prohibits discrimination but does not penalize non-compliance, thus rendering persons subject to discrimination defence-less.⁵⁴ Dismissals based on prejudice have resulted in legal proceedings based on Article 206 of the Mexico

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* at 20

⁴⁸ *Ibid.* at 20-21.

⁴⁹ *Ibid.* at 21.

⁵⁰ *Ibid.* at 23.

⁵¹ *Ibid.* at 24.

⁵² *Ibid.* at 27

⁵³ *Ibid.* at 29.

⁵⁴ *Ibid.* at 28.

City Penal Code, as is the case of Roberto Ralph (a Coca-Cola executive).⁵⁵ Although the Federal District's Ministry of Labour has sought to address discrimination based on sexual orientation or gender identity, there are no guidelines to deal with situations of discrimination or violence nor are there programs for the LGBT population.⁵⁶

Failure of governmental agencies to take action against homophobia in Mexico City

In 2006, the Mexican House of Representatives reached “un punto de acuerdo” to urge representatives of the federal, state and municipal Senates to declare May 17 a day of National Anti-Homophobia. The Mexico City Federal District Legislative Assembly adopted this recommendation in 2007. However, a questionnaire sent to 27 agencies of the Federal District sent by the CDHDF to accompany this event revealed “la falta conocimiento sobre este grupo de la población y por consiguiente la falta de acciones contra la discriminación.”⁵⁷ Indeed, only 5 unit have taken action in this sphere: the Secretaría de Desarrollo Social, de Cultura y de Turismo; the Secretaría de Seguridad Pública; the Procuraduría General de Justicia del Distrito Federal; Secretaría de Desarrollo Social; and the Dirección General de Igualdad y Diversidad Social.⁵⁸

Transgendered persons and civil registration

Transgendered persons lack official documents that reflect their gender identity; this deficiency makes it difficult to conduct banking, get a driver's licence, procure employment, access to health care etc.⁵⁹ Such a legal personality [“personalidad jurídica”] is, moreover, the basis for legal rights and a condition for the enjoyment of citizenship.⁶⁰ It is particularly difficult for transsexual and transgendered persons to obtain employment because employers comparing official identification documents with the identity of the person applying for the position are likely to receive discriminatory treatment from potential employers.⁶¹ Trans persons often falsify their credentials to avoid such problems.⁶² While other countries, however, have simplified the process of issuing birth certificates reflecting the gender identity of trans persons, Mexican law lacks a simple and inexpensive procedure by which trans persons can rectify their identification documents.⁶³

Recent reforms, however, approved by the ALDF will authorize the Civil Registrar to issue new birth certificates to transgendered people in the Federal District of Mexico

⁵⁵ *Ibid.* at 29-30.

⁵⁶ *Ibid.* at 30.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* at 33.

⁵⁹ *Ibid.* at 39, 42.

⁶⁰ *Ibid.* at 40.

⁶¹ *Ibid.* at 43.

⁶² *Ibid.* at 44.

⁶³ *Ibid.* at 45-46.

City.⁶⁴ A federal *Ley para la No Discriminación de los Derechos Humanos y Civiles de las Personas Transgéneros y Transsexuales*, filed [“presentada”] March 6, 2007, also guarantees the human right to be treated with equal recognition of identity.⁶⁵ The federal Camera de Diputados, la Comisión Especiales sobre No Discriminación, Neuvos Sujetos y Nuevos Decrechos de la LX Legislatura, in November 2007, also expressed a favorable opinion towards amending the Constitution to recognize the legal status of transgendered people.⁶⁶ The Federal District Legislative Assembly, on January 31, 2008, delivered to the Government Commission a decree amending and supplementing the Civil Code, Code of Civil Procedure, Penal Code and the Health Act to recognize the legal personality of trans persons and improve their access to health services in the Federal District (pending amendments to the Health Act).⁶⁷

Public sector employees as sources of rights abuse in Mexico City

A substantial share of reports of discrimination towards LGBT persons are against “agentes de seguridad pública y procuración de justicia.”⁶⁸ The CDHDF found that LGBT persons expressing their emotions or gender identity in public were frequently victim to “insultos, malos tratos y abusos”; trans persons were particularly vulnerable.⁶⁹ Law enforcement officials, according to CDHDF reports, have used excessive force in the arrest of LGBT persons or improper and incorrect [“abusiva o incorrecta”] treatment of LGBT victims of crime by officials who should provide care.⁷⁰ 11% of Mexico City’s LGBT population, according to one survey, has been victim of threats, detention and extortion by police due to their sexual orientation.⁷¹ These abuses by public servants towards LGBT persons encompass “el use un lenguaje insultante, sexualmente explícito, y las amenazas de golpes y violencia física hasta la violación.”⁷²

Arbitrary arrest of LGBT persons and police harassment in Mexico City

LGBT persons have been subject, according to one case reported to the CDHDF, to arbitrary arrest, extortion, physical or verbal assault by elements of the Secretaría de Seguridad Pública del Distrito Federal, the Sistema de Transporte Metro or agents of the Policía Judicial simply for having a non-heterosexual appearance.⁷³ Abuses by officials responsible for public safety and the administration of justice have arrested LGBT persons without investigation or in the absence of legal circumstances that would justify

⁶⁴ *Ibid.* at 39-40.

⁶⁵ *Ibid.* at 50.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.* at 58.

⁶⁹ *Ibid.* at 55.

⁷⁰ *Ibid.*

⁷¹ *Ibid.* at 58.

⁷² *Ibid.* at 55.

⁷³ *Ibid.* at 58.

an arrest.⁷⁴ These violations occur despite explicit prohibitions against discrimination based on sexual orientation by public servants.⁷⁵

Members of the Secretaría de Seguridad Pública, according to one report in the CDHDF, harassed and beat two youth in the Zona Rosa of Mexico City in September 2006.⁷⁶ When the youths reported that they had been subject to discrimination for the sexual preference to a functionary of the Secretaría de Seguridad Pública, they were told that such a violation could not be registered because it did not appear on the computer catalogue of offences.⁷⁷ This occurred even though Article 206 of the Mexico City Penal Code prohibits discrimination based on sexual preference.⁷⁸

The Zona Rosa is a district of Mexico City which has long been tolerant of sexual diversity but the increased presence of agentes de seguridad pública have made the area a place of harassment.⁷⁹ In October 2007, for example, around 30 armed members of la Secretaría de Seguridad Pública del Distrito Federal (SSDF) entered the area, harassing persons by compelling them to show their belongings and to stand against walls.⁸⁰ Another woman reported being stopped by the police while distributing flyers and being accused of promoting lesbianism.⁸¹

Transgendered persons as targets of law enforcement agents

Transgendered people are particular targets of law enforcement officials. One trans person reports extortion and rape at gunpoint by an agent.⁸² LGBT youth are also severely exploited, sometimes sexually, as has been suggested by fieldwork of the CDHDF in the Alameda District of Mexico City.⁸³ Many of these youth were disowned because of their sexuality and were victims of abuse by police and agents of the Public Ministry, whose demands included sexual favors.⁸⁴

Attempts by government agencies to address these problems

According to the CDHDF, government policies aimed at addressing these problems developed by the Procuraduría General de Justicia del Distrito Federal and the Secretaría de Seguridad Pública del Distrito Federal are insufficient.⁸⁵ In response to a

⁷⁴ *Ibid.* at 69.

⁷⁵ *Ibid.* at 59.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.* at 59.

⁷⁹ *Ibid.* at 60.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.* at 61.

⁸³ *Ibid.*

⁸⁴ *Ibid.* at 62.

⁸⁵ *Ibid.* at 69.

questionnaire sent by the CDHDF, the Secretaría de Seguridad Pública del Distrito Federal reported that of the 7,777 police officers receiving training in human rights, only 30 received training in relation to LGBT issues.⁸⁶ In response to the same questionnaire, the Attorney General of Mexico City stated that only three of the sixteen *fiscalías* trained staff in relation to LGBT issues.⁸⁷

Representatives of the Sistema de Transporte Colectivo Metro have also been perpetrators of human rights violations against LGBT Mexicans.⁸⁸ In 2002, two children were assaulted physically and verbally by a meter guard.⁸⁹ In 2004, three Metro security guards severely beat and robbed a youth telling him, “Por ser homosexual, no debiste haber nacido”.⁹⁰

Underreporting in Mexico City of LGBT-related discrimination

In almost all cases of assault, a failure to complain or report is due to fears that complaints will be met with dismissal, hostility or abuse by public officials.⁹¹ LGBT persons fail to complain about discrimination by security officers and administrators of public justice because they fear reprisal.⁹² According to the CDHDF, there are insufficient disciplinary measures against officials who commit human rights violations against LGBT persons and insufficient protective mechanisms for their victims.⁹³

Inability of LGBT persons to gain legal redress in the Federal District

The Attorney General of the Federal District, according to Article 13 of the Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal must provide: free legal, medical and psychological attention and compensatory mechanisms.⁹⁴ Agents of public service, according to Articles 9 and 9 bis of the Código de Procedimientos Penales para el Distrito Federal and Article 47 of the Ley Federal de Responsabilidades de los Servidores Públicos, must respect human dignity and ensure persons are met on equal terms.⁹⁵

Despite this legal framework, public servants have discouraged LGBT victims from lodging complaints, thereby impeding *de facto* access to justice.⁹⁶ One person attempting to report an attack to the Ministerio Público was told by an agent, “Ustedes los gays, lo

⁸⁶ *Ibid.* at 64.

⁸⁷ *Ibid.* at 63.

⁸⁸ *Ibid.* at 65

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.* at 69.

⁹² *Ibid.* at 70

⁹³ *Ibid.* at 70.

⁹⁴ *Ibid.* at 79.

⁹⁵ *Ibid.* at 79-80.

⁹⁶ *Ibid.* at 80.

que pasa es que trataron de abusar de los agresores. Y los voy a acusar a ustedes, gays, de acoso sexual.”⁹⁷ One trans-person attempting to report discriminatory behaviour was told by a representative of the Ministerio Público, upon learning that the complainant was transgendered from viewing her identity card, that she was not entitled to lodge a complaint unless there was physical injury. He advised her to go to the Procuraduría Social, because her claim was not of a criminal nature (even though discrimination is punishable under the *Código Penal*) and forcibly ejected her from the agency.⁹⁸

Failure to properly investigate claims related to LGBT discrimination and hate crime

In cases related to sexual orientation discrimination, public agencies have failed to properly investigate claims due to a lack of understanding of the elements of discrimination and to an underlying structure of corruption.⁹⁹ One agent refused to file a complaint based on the criminalized offence of LGBT-related discrimination because the offence did not appear on their computer system.¹⁰⁰ In situations of violent murder, moreover, officials often investigate the crimes as those of passion rather than of discrimination due to homophobia.¹⁰¹

According to the CDHDF’s inquiry to the Attorney General for the Federal District, 53% of LGBT-related hate crimes reported are not brought to criminal action, 29% are pending action and only 17% “se ha consignado a las personas responsables.”¹⁰² The district which ranks highest in terms of LGBT hate crimes is Cuauhtémoc; this district is home to most of Mexico City’s gay nightclub and bar scene.¹⁰³

Although the Federal District’s Ley de Atención y Apoyo a las Víctimas del Delito ensures a victim’s right to reparation, failures by responsible public officials to address allegations of LGBT-based discrimination curtails this promise for LGBT victims.¹⁰⁴

Health

The CDHDF Report identified four issues violating the health care rights of LGBT persons: 1) a lack of protocols or ethical standards that leads to degrading treatment of LGBT persons; 2) inadequate health service needs for sex re-assignment; 3) Prejudice against persons living with HIV 4) a policy against the “incorporación de parejas del mismo sexo a servicios de salud.”¹⁰⁵ Indeed, at its own admission, the Secretaría du Salud del Distrito Federal has not protocols, standards, programs and services aimed at

⁹⁷ *Ibid.* at 80.

⁹⁸ *Ibid.* at 81.

⁹⁹ *Ibid.* at 82.

¹⁰⁰ *Ibid.* at 82.

¹⁰¹ *Ibid.* at 83.

¹⁰² *Ibid.* at 85.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.* at 90.

¹⁰⁵ *Ibid.* at 95.

understanding the health problems of the LGBT community.¹⁰⁶ This is particularly problematic for transgendered persons seeking support for surgical transition; this segment of the LGBT population can be exposed to significant dangers (including unsafe medical practices) as a result.¹⁰⁷

Homophobia, moreover, is a major obstacle to the care and treatment LGBT persons with HIV receive from health care professionals.¹⁰⁸ Many doctors, for example, consider homosexuality immoral. Prevention campaigns, moreover, are unduly focused on men, thus excluding attention to lesbian women and trans persons.¹⁰⁹

6. GOVERNMENTAL REPORTS

Immigration and Refugee Board of Canada, “Mexico Reports of sexual abuse committed by police officers against homosexuals, and against other vulnerable individuals (2006 – November 2007) (9 January 2008) online: <<http://www.unhcr.org/refworld/docid/47ce6d7fc.html>>.

Although reports describing sexual abuse of homosexuals was scarce, news sources reported police misconduct against lesbians in Mexico City and a lesbian NGO representative alleged she was aware of cases involving verbal and physical abuse by police. 11% of respondents to a survey of 506 LGB persons in Mexico City reported threats of extortion and detention by police.

There were reports of sexual abused committed by police against vulnerable individuals in Mexico including migrant workers, detainees and, in one case, a former female police officer.

7. NON-GOVERNMENT ORGANIZATION REPORTS

Amnesty International

Amnesty International, *Crimes of hate, conspiracy of silence: torture and ill-treatment based on sexual identity* (2001).

“On 7 December 2000, Luciano Rodríguez Linares, a gay prisoner at Topo Chico prison, Nuevo León State, Mexico, was taken out of his cell and beaten. Several prison officers held him down as another reportedly inserted a finger into his anus, drawing blood. Although ostensibly searching for drugs, the officer is reported to have said “If that’s what you want, I’ll give it to you”, as other officers looked on and laughed. The officer told him he would be killed if he filed a complaint. In January 2001, AI again expressed concern to the authorities that Luciano Rodríguez was at risk of reprisals for having

¹⁰⁶ *Ibid.* at 101.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* at 105.

¹⁰⁹ *Ibid.*

lodged the complaint” (18-19).

“In August 2000, a US federal court ordered the US government to grant asylum to Giovanni Hernandez-Montiel, a transgender Mexican gay man who had been arrested, detained, strip-searched, raped and otherwise tortured by Mexican police over a period of years” (28).

National Centre for Lesbian Rights

National Centre for Lesbian Rights, “Case Docket: In re. M.Q.,” *National Centre for Lesbian Rights*, online:

<http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_inremq>.

Homosexual Mexican claimant successfully applies for asylum in United States after alleging experiences of physical assault by family, peers and police on account of his sexuality. A gang had threatened to kill him should they see him again. Asylum in U.S. granted September 2008.

National Centre for Lesbian Rights, “Case Docket: In re. Armando,” *National Centre for Lesbian Rights*, online:

<http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_inrearmando>.

Homosexual claimant from Mexico alleges being victim to a raid on a gay bar in which a police member, after taking his ID card, told him, “You are going to remember me.” He thereafter endured harassment, threats, violence, extortion and robbery at the hands of the officer and his friends. His U.S. claim was granted June 2007.

National Centre for Lesbian Rights, “Case Docket: In re. Irma,” *National Centre for Lesbian Rights*, online:

<http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_inreirma>.

Transsexual Mexican is granted U.S. asylum in August 2007. She alleged abuse by family and the community and kidnapping and brutal assault by police.

National Centre for Lesbian Rights, “Case Docket: In re. Luis,” *National Centre for Lesbian Rights*, online:

<http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_luis_mexico>.

U.S. asylum claimant from Mexico experiences familial and community discrimination and is physically assaulted by police on several occasions. Asylum granted 2004.

National Centre for Lesbian Rights, “Case Docket: In re. Valeria,” *National Centre for Lesbian Rights*, online:

<http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_inrevaleria>.

U.S. asylum claim granted September 2007 to Mexican lesbian who endured extreme

familial violence, suffered post traumatic stress disorder and serious depression.

8. SCHOLARSHIP

Cesar Infante, Sandra G. Sosa-Rubi and Silvia Magali Cuadra, “Sex work in Mexico: vulnerability of male, *travesti*, transgender, and transsexual sex workers,” (2009) 11:2 *Culture, Health & Sexuality* 125.

This Mexico City-based study addressed the “growing concern [in Mexico] about rising levels of HIV infection among MSM as well as among *travestis*, transgender and transsexual (TTT) persons” (126). The report found that socioeconomic characteristics of MSM and TTT sex workers varied from low to mid-range and was linked to the neighborhoods in which the sex workers practiced their trade (130). TTT sex workers in *Insurgentes* and *Nuevo León*, for example, were “middle-class” (132). Those in other areas were “from a low-socioeconomic background” with little education (132-133). Many MSMs turned to sex work after relocating from their homes to Mexico City because of abuse and discrimination from families and the community (131).

According to the authors, TTTs report physical abuse, including from family and “are commonly rejected and suffer stigma and discrimination even from the gay community” whose members often equate TTTs with thieves or drug users (133). The lack of legal documentation reflecting the gender identities of TTTs was articulated as a serious problem” (133). One TTT hairstylist reported beatings, discrimination and unfounded detention by police who also raped, cut her hair and beat her (133).

Although TTTs working in bars, clubs or beauty salons had a degree of protection, those in the sex trade experience more violence than non-transsexual male sex workers (133). TTTs also “face violence, abuse, unemployment, discrimination within their homes, stigma within the wider community and difficulty establishing supportive social networks” (133). Those in the sex industry “reported multiple instances of physical and psychological abuse, not only at the hands of their clients and the police, but also from other MSW and the gay community. Their visibly ‘different’ appearance and body transformation made them more vulnerable to violence and abuse in the streets” (136).

A TTT person’s “social trajector[y]” may also vary with individuals working simultaneously in the sex trade and as entertainers and others becoming hair stylists (133). Movement into the hairstyling trade is “a signal of success” (133).

Sex workers were subject to “continuous police round-ups” in some areas of Mexico City and were under the control of pimps in some locations (132).

This particular study did not uncover “anyone who said that they had been forced to have sex without a condom and the TTT interviewees “mentioned consistent refusal on their part to have penetrative sex if the client did not want to use a condom or if a condom was not available” (133-134). Non-transgender male sex workers, however were more inconsistent in condom use despite their knowledge of its importance in HIV prevention

(134). They were also uncomfortable “talking to public sector doctors” and “had difficulty meeting their basic needs for food, housing, employment, education, healthcare, HIV testing with pre- and post-counselling and access to condoms” (134). TTTs appear to have also been neglected by the public health system in its HIV prevention programs (134).

The study noted other serious health concerns pertaining to the TTT population in Mexico:

For TTTs, another important health need was the need to buy oils and hormones. Many TTT use them incorrectly, take inappropriate doses and damage their skin and muscles by injecting oil. At the time of this study, we could not identify a single official governmental health service that engaged with the health needs of TTT sex workers. (135)

The authors identified the followed social, cultural and socioeconomic factors associated with vulnerability to HIV infection for TTT and male sex workers: “the context where sex workers work, the stigma and discrimination related to sex work, the violence enacted towards TTTs, the low levels of social and legal support and the limited access to healthcare that sex workers have in Mexico City” (135). They stressed “the complete absence of healthcare services directed to both MSW and TTT sex workers” (135).

Paulina Millán Álvarez, “‘Adolescents Can’t Be Gay’: Perceptions on Youth, Sexual Diversity, and the Case of Mexico,” (2006) 3:2 *Journal of Gay and Lesbian Issues in Education* 141.

This study attributed the scarcity of information on matters related to sexual identity and sexual orientation of Mexican youth to the controversial nature of topics related to homosexuality and transgenderism (142) and the labeling of sexual orientation as “an adult issue” (142). While researchers have focused on topic such as sexuality education, contraception, condoms and intercourse, topics relating to sexual orientation and youth are overlooked (141-142).

With the exception of the Nueva Generación de Jóvenes Lesbianas (New Generation of Lesbian Youth) in Mexico City, there is no other support group for this segment of the LGBT population (142). Though successful, this group encountered criticism from LGBT activists, during its early years, prohibited from inviting members under the age of 18 due to a federal law prohibiting the “induc[ement of]” homosexuality (142). This law was abolished in 1998 (143).

A 2004 study by the author reveals that 7.4% of female and 3.8% of male high school students (out of a pool of 3800 participants) had been sexually active with a member of the same sex (143).

The author stated that “[y]oung gay and lesbian people lack protection from the law or [the] means and support to denounce abuses; others simply lack knowledge about what

few rights protect them. This means that many abuses perpetrated against them may remain untold and suffered in silence” (143-144).

In addition to abuse in schools and in the workplace, the family is a significant site of discrimination for Mexican youth” (144). The problems for LGBT youth arising from the almost unlimited control of parents over individuals under 18 in Mexico is exacerbated by “few legal protections for the rights of minors” (144). Álvarez states:

In Mexico, parents aren’t questioned when they decide to send a gay son or daughter to therapy in order to “change” sexual orientation (often there is a lack of regulation in terms of who is certified or not to be a therapist), or when they use physical and psychological abuse if they find out or suspect their child is gay. Amnesty International (2001) has documented many of these abuses. Similarly, it is too common to find LGB youth consigned to Mexican psychiatric institutions due to the ignorance or prejudice of mental health professionals or parents’ desire to find a “cure.” Research on the diagnostic process and the effects institutionalization have on these young “patients” is a topic of necessary attention. (144)

Luis Ortiz-Hernández and José Artura Granados-Cosme, “Violence Against Bisexuals, Gays and Lesbians in Mexico City,” (2006) 50:4 *Journal of Homosexuality* 113.

This study noted that, while Latin American politicians and academics have expressed greater interest in the problems of LGB violence, knowledge about the living conditions of LGB is “elementary.” The Mexican *Comisión Ciudadanan Contra los Crímenes de Odio por Homofobia* (Citizen Commission Against Homophobic Hate Crimes) documented 164 LGB murders between 1995 and 1998 (115). Apart from this group, there have been “few attempts” to document “the different forms of aggression endured” by LGBs in Mexico and governmental institutions accord “inadequate attention” to the problem (115).

Participants in this study reported the following experiences of violence in the past year:

Verbal offenses: 35% (men) 26% (women)

Verbal threats: 10% (men) 12% (women)

Had an object thrown at them: 7% (men) 8% (women)

Were spat upon: 1% (men) 4 (women)

Were followed or persecuted: 12% (men & women)

Physical aggression: 5% (men) 12% (women)

Physical injury with a weapon: 2% (men) 4% (women)

Sexual harassment: 20% (men) 17 % (women)

Molestation: 16% (men) 13% (women)

Rape: 4% (men) 3% (women)

Damage to personal belongings: 7% (men) 12% (women)

Assault: 12% (men) 10% (women)

Robbery: 7% (men) 5% (women)

Hit by relatives or acquaintances: 6% (men) 5% (women)

These participants reported the following experiences of violence in their adulthood:

Verbal offenses: 64% (men) 49% (women)

Verbal threats: 23% (men) 21% (women)

Had an object thrown at them: 18% (men) 10% (women)

Were spat upon: 4% (men) 3% (women)

Were followed or persecuted: 23% (men) 15% (women)

Physical aggression: 17% (men) 14% (women)

Physical injury with a weapon: 6% (men) 5% (women)

Sexual harassment: 34% (men) 22% (women)

Molestation: 27% (men) 16% (women)

Rape: 10% (men) 8% (women)

Damage to personal belongings: 16% (men) 15% (women)

Assault: 32% (men) 19% (women)

Robbery: 18% (men) 11% (women)

Hit by relatives or acquaintances: 13% (men) 9% (women) (125).

The study also suggested “it was probable that [Bisexual or Gay] feminine males and [Bisexual and Lesbian] masculine females are attacked with a greater frequency than [Bisexual and Gay] masculine males and [Bisexual and Lesbian] feminine females” (127). It also noted that, according to “ethnographic studies performed in Latin America”, “feminine males are frequently subjected to sexual harassment” (128). Relatives, especially brothers, or members of a victim’s peer group were frequent aggressors (128). The study noted, moreover, that LGBT victims “do not report violence because they are afraid of being harassed against within the justice institutions or being held responsible for the attack, or they feel that the denunciation will have no effect” (134).

Ortiz-Hernández and Granados-Cosme also found that 42.3% of the male Bisexual and Gay and 19% of the female Bisexual and Lesbian participants in their study “had been detained, threatened or extorted by the police” (134). From this, they deduced that LGBs “donot report aggressions they suffer . . .because they think law enforcement personnel will be insensible to their situation or they might even be held responsible for the attacks.” (134).

Ortiz-Hernández and Granados-Cosme concluded that an LGB individual’s experience of violence was more linked to their defiance of “gender stereotypes [than] their sexual orientation” (134-135) but that attacks were also “due to their sexual orientation” (137).

Paulina Álvarez, “LGBT Youth and Issues in Mexico” in *Youth, Education and Sexualities: an international encyclopedia* (Westport: Greenwood, 2005).

Despite the successes of LGBT persons in implements antidiscrimination laws, policies and campaigns, the issue of protecting LGBT youth has been overlooked (557). Álvarez states that “there is a long-standing between law and practice” in Mexico which “makes it difficult, especially for minors who fear a disclosure of their sexual orientation, to claim

their rights or to accuse any authority or institution of harassment or discrimination” (557). The Comisión contra la Discriminación, whose budget was reduced 50% by the government, was designed to afford extra protection to vulnerable communities like the LGBT lacks funds “and the legal power to prosecute discriminators” (557). Moreover, the failure of the commission to protect against familial discrimination (“the most common site of violence against LGBT youth”) compromises the effectiveness of protective measures for LGBT youth (557).

Álvarez states that schools can expel LGB youth without legal consequences (557). The consideration of minors as “property” permits parents to send LGBT children to institutions for rehabilitation which includes seclusion and violent punishment (557). Health professionals and other adults working with adolescents are uneducated with regards to LGBT matters (557).

In 2004, a high school was opened by the LGBT community for teens denied an education (558). The program is part of the Centre de Atención para Adolescentes y Jóvenes Gay, Lesbianas y Bisexuales de México (558). In larger states like Guadalajara, Monterrey, Puebla and Mexico City, there are venues that “provide entertainment for the LGBT youth, although none are exclusively for young people” (559).

Teachers, Alvarez reports, are ill-prepared to respond to harassment of students and psychologists are willing to offer “reparative therapies” as a first choice to patients troubled by their sexual identity (559).

Research on LGBT Mexican youth is “scarce” (559) but the mass media has included depictions and homosexuals, lesbians and the transgendered (559).

Marissa B. Ugarte, Laura Zarate and Melissa Fairley, “Prostitution and Trafficking of Woman and Children from Mexico to the United States,” *Prostitution, Trafficking and Traumatic Stress* (Binghamton: Haworth Maltreatment and Trauma Press, 2003) 147.

According to this study, “[t]ransgender adolescents prostitute for food and shelter and also as a way to send money home to families” (153). Homelessness, according to the authors, “may be a consequence of family violence including homophobia” (153).

The researchers give an account of a transgendered teen “who has been trafficked into the United States for the purpose of prostitution by a criminal gang that operated in her home town in Mexico” (152). Her mother had permitted, and probably benefitted financially from, the prostitution of her child (153). Ugarte, Zarate and Fairley state that the teen “was traumatized by a homophobic social environment in which she was surrounded with contempt and physical violence, including rape” (153). She had been exposed to “social stigma [which] escalated to contempt and physical violence” (153). At an emergency shelter, she was humiliated and socially isolated due to her sexual and gender identity; she ran away from this shelter (153). After state authorities ensured that she was returned to her mother, she did not attend school but instead worked at a restaurant (at her

mother's request) to support the family (154). By the time the DIF (Mexican Social Services) filed a complaint against the mother, the teen ran away to a large Mexico city and, at age 12, began to work as a dancer at a strip club and probably continued to engage in prostitution (154).

An NGO specializing in human trafficking, the Bilateral Safety Corridor Coalition (BSCC), determined not to interfere with the teen on grounds that "it would further harm the child to offer her services that would not adequately address her complex needs. Treatment for Guadalupe should necessarily include: long term housing, medical care, safety planning to protect her from violence by pimps, addiction treatment, and vocational training. Psychotherapy would address childhood trauma, prostitution/trafficking trauma, and at the same time address race and cultural prejudice, traumatic homophobia, prejudice against transgender persons, and repeated betrayals by social and legal systems, as well as betrayals by friends and family" (154).

9. MEDIA REPORTS CONCERNING LGBT VIOLENCE

Tom Godfrey, "Mexican lesbian couple claim refugee status," *Edmonton Sun* (18 July 2009), online:
<<http://www.edmontonsun.com/news/canada/2009/07/18/10178361-sun.html>>.

Two lesbians claim refugee status. There were constantly persecuted on the basis of their sexuality and alleged long-term harassment, following and physical assault by police. They were detained by police last year.

Lauren Smiley, "Boarder Crossers" *San Francisco Weekly* (25 November 2008) online: < <http://www.sfweekly.com/2008-11-26/news/border-crossers/1>>.

One transsexual reports having fled Mexico because of police brutality. Another transgender claimant for asylum stated have been sexually assaulted twice at 14. Another interviewee's transgender roommates were murdered with she was out. Another, after lodging a complaint on having been forced to give a police officer oral sex, was victim of a break in and physical violence.

Luciano Campos Garza, "Transvestites, victims of repression in Monterrey," *Proceso* (13 March 2009) online:
<http://www.asylumlaw.org/docs/sexualminorities/Mexico_031409.pdf>

NGO reports municipal police have unleashed a climate of repression against the transvestite community through arbitrary detentions, extortions and false accusations.

Rex Wockner, "Gay couple arrested in Mexico for Kissing and Hugging," *International News* (27 October 2008) online:
<http://www.sgn.org/sgnnews36_44/page9.cfm>.

American gay couple arrested in Playa del Carmen, Quintana Roo, for public kissing and

hugging. There were accused of moral misdeeds, jailed 15 hours and fines \$148US.

Ceci Conolly, “Latin American Nations Treat Gays Better, Asylum is Elusive” (12 August 2008) online: < http://www.washingtonpost.com/wp-dyn/content/article/2008/08/11/AR2008081102038_pf.html>.

"People think the homophobia is under control, which is not true," Saavedra said.
"Homophobia in Mexico is really high."

One interviewee claimed that even Mexico City could be a site for police harassment and that, as he emerged from a gay bar in the Zona Rosa, he and friends were rounded up by police.

“Madison Woman Murdered in Mexico,” NBC (2 June 2008) online: <<http://www.nbc15.com/home/headlines/19262364.html>>.

Transgender activist from U.S. murdered on vacation in Puerto Vallarta. Murdered has been imprisoned and charged with homicide.

Cate Simpson, “Mexico still not safe for queer citizens (3 March 2008) online: <http://www.xtra.ca/public/viewstory.aspx?STORY_ID=4418&PUB_TEMPLATE_ID=2>.

“In a typical case one man described a series of violent incidents beginning with verbal and physical attacks at school, through to being attacked by police officers when he was seen leaving a gay bar with his partner. When he tried to report the incident he says he was told he could not do so without the names of the officers who had attacked him.”

““In Mexico if you are attacked by a government official, the theory is that you can go to a higher level for protection. But it doesn't work like that.”

Corruption is a major problem in Mexico according to speakers at a University of Toronto panel last month that looked at that country's ability to protect its citizens against abuses.”

“He points to the murder of prominent gay rights activist Octavio Acuña in the Mexican province of Querétaro in June, 2005. Acuña was stabbed to death in the building where he had set up an office to distribute condoms and provide harm-reduction services to queers. The police branded the murder a "crime of passion" (as is often the case with homophobic attacks), claiming that his partner was responsible, and refused to investigate further.”

Rex Wockner, “90 cops visit Mexico City gay bar” International News (25 February 2008) online: <<http://www.tobe.ca/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=248&cntnt01origid=101&cntnt01returnid=101>>.

Some 90 police officers descended on the Mexico City gay bar Neón in the gay Zona Rosa district Feb. 16.

Tamara Letkeman, “Gay man killed after refugee claim denied,” *Xtra* (6 July 2007) online:

<www.xtra.ca/public/viewstory.aspx?AFF_TYPE=1&STORY_ID=3287&PUB_TEMPLATE_ID=2>.

Queer refugees allege harassment by Mexican police

“Friends of a former Vancouver resident murdered in Mexico whose refugee claim was rejected by Canada are claiming he was killed because he was gay, and calling into question this country's attitude toward queer refugees seeking asylum.”

“Serrano and Cordero [friends of the victim] are both familiar with this scenario, having both successfully claimed refugee status here after fleeing alleged police persecution in Mexico. Serrano says he left his country with his partner after police began harassing them and extorting money from them after they were seen leaving a gay bar in Mexico City. Cordero left after police allegedly threatened her life when they discovered she was transgendered.”

“The police can make your life a nightmare,” claims Serrano, who worked as a reporter in the pressroom of the Mexico City police department for 11 years. “They see you as a resource to get money. They threaten to tell your family or your boss.”

Although they believe they have information that could shed light on Villegas' murder, Serrano and Cordero say it is useless to contact Mexican police.

“When they find out the victim was gay, they say gay people deserve that,” Cordero alleges.”

Rex Wockner, “Mexican gay leader murdered,” *San Francisco Bay Times* (25 January 2007) online:

<http://www.sfbaytimes.com/index.php?article_id=6026&sec=article>.

Well-known gay activist murdered in Matamoros, Mexico “just days after staging a press conference calling for the state of Tamaulipas” to pass a gay partnership law. He had also recently demanded police stop their alleged arrests of gays. Gay activists protest the description of the murder as a crime of passion.

“Court reinstates transsexual's bid for asylum,” *Metropolitan News Enterprise* (4 January 2007) online: < <http://www.metnews.com/articles/2007/mora010407.htm>>.

Transsexual refugee claimant from Mexico alleges having been beaten by a police officer in her hometown of San Luis Potosi at age 16. She had also been raped, slapped and harassed fellow inmates at a prison while prison officers stood by laughing.

Gary Barlow, “Gays Allege Police Beating in Mexico City,” (2006) 7:52 *Chicago Free Press*.

Three gay men allege apprehension and beating by police in Mexico City. After the police department refused to accept their complaints, they filed complaints with the city's human rights commissioner.