



UNIVERSITY OF TORONTO  
FACULTY OF LAW

INTERNATIONAL  
HUMAN RIGHTS  
PROGRAM

# Mexico – special report

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Country Report for use in refugee claims based on persecution relating to lesbian claimants

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## I: Introduction

The following report shows that, although districts within Mexico have been implementing law and policy in favour of sexual minorities' rights, there has been a failure to undo the culture of homophobia within the state protection apparatus. Hate crimes against LGBT individuals continue to be carried out with impunity. Although the younger generation and the more urban districts are becoming increasingly tolerant of homosexual expression, a homophobic culture still predominates among Mexicans.

## II: Legislation

### *Mexican legislation*

Table available online: <<http://www.gaylawnet.com/laws/mx.htm>>

## III: Jurisprudence

### *Immigration and Refugee Board decisions*

*O.Q.W. (Re)* (Immigration and Refugee Board of Canada Refugee Protection Division) [2008] R.P.D.D. No. 168.

- **Before seeking protection in Canada, the claimant must demonstrate that he did his due part in seeking help from state agencies**
- **Ignorance of state agencies and procedures is not a valid defence**
- **Police corruption is not an issue in Mexico since significant efforts are being made by the Mexican government to combat corruption**

Claimant was on his motorbike when a member of a homophobic group hit him in a taxi. After his stay at the hospital, he sued the taxi driver, but the suit did not continue as a result of the group's influence on authorities. It was held that there were indications that the state had done what it could to bring the perpetrator to justice (para 8). Before seeking protection in Canada, the claimant must demonstrate that he did his due part in seeking help from state agencies and the board ruled that ignorance of state agencies and procedures is not a valid defence (para 15). Finally, the board ruled that police corruption was not an issue in Mexico since significant efforts were being made by the Mexican government to combat corruption (para 26-27). Mexico City was considered to be an IFA for homosexuals (para 43).

### *Federal Court Decisions*

*Chagoza c. Canada (Ministre de la Citoyenneté et de l'Immigration)* [2008] A.C.F. No. 908.

- **An applicant is not required to exhaust all possible avenues of state protection in order to prove that state protection is inadequate, especially where there is clear evidence that to attempt to do so would threaten the applicant's security or that of his relations**
- **It is not enough for the state to express the intention to protect against discrimination based on sexual orientation; there must be evidence that the state has taken measures to put the state protection into practice**

The applicant was sexually harassed by police for his role in a play about homosexuality. He subsequently tried to operate a restaurant and was unable to because his property was repeatedly vandalized, including with homophobic graffiti. He approached the police about the ongoing vandalism on three separate occasions, but the police did not investigate or prosecute anyone.

The Commission below had ruled that the applicant had failed to show that he had exhausted all means of state protection, and that there was proof that the Mexican government had made a commitment to protect against homophobia. The court ruled that in the context of this case, where the applicant had been assaulted by the police itself, it was not necessary for the applicant to exhaust all possible avenues of protection, and that this testimony showed that there was a gap between commitment to and enactment of anti-homophobic measures by the Mexican government that had to be taken into account. The applicant was awarded a new hearing.

*Perez v. Canada (Minister of Citizenship and Immigration)* [2007] 158 A.C.W.S. (3d) 639

- Facts: Perez ended her relationship with her ex-boyfriend to enter into a lesbian relationship (para 1). Her ex-boyfriend and two of his friends physically and sexually assaulted them. The refugee claims for Perez and her lesbian partner were heard together (para 2). The board rejected their claims because of their lack of credibility and Perez seeks judicial review (para 3).
- Mactavish J: Judicial review is granted. First, the board erred in naming Perez's lover as the principal applicant when the principal applicant was in fact, Perez (para 6). Second and more significantly, the board found Perez not credible simply because it found that her lover was not credible. The judge held that the fact that Perez's lover was not credible does not "give reason to doubt the truthfulness of Ms. Perez's testimony" (para 17).

*Parrales v. Canada (Minister of Citizenship and Immigration)* [2006] 54 Imm. L.R. (2d) 120.

- Facts: Parrales is a lesbian and underwent psychotherapy from 1993 to 1995 because she couldn't come to terms with her sexual orientation. In 1996, a group of men assaulted her and injured her nose. Two years later, a group of policemen called her a dyke and beat her. Her nose required reconstructive surgery as a result (para 3). Although Parrales did not report the incident to the police, she reported it to the Human Rights Commission, who did not help her. She then moved to Monterrey where she began a long term relationship. She was sexually assaulted by policemen while her partner was held at gunpoint. The police threatened them to make sure they did not report the assault (para 5). When her partner began a heterosexual relationship, her partner's fiancé threatened to harm her if she did not disappear and told her he could harm her because he was a police officer. She returned home where she was afraid to leave her house. She became depressed and returned to therapy and was prescribed anti-depressants. She finally left Mexico in 2003 when she received another threat (para 6).
- Layden-Stevenson J: Judicial review is granted. The test for determining an internal flight alternative consists of two steps. First, the board "must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA." Second, "the conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including the consideration of a claimant's personal circumstances, for the claimant to seek refuge there." (para 9) The judge agreed with the board's decision regarding the first step because she would not be persecuted in Mexico City due to the level of state protection in the city (para 10). The judge however, disagreed with the board's decision regarding the second step. The board held that it would be reasonable for Parrales to move to Mexico City since she was well-educated, capable, young and resourceful. The judge held that the board erred in not considering her personal experiences which included abuse and sexual assault by the Mexican police (para 12).

*Saldivar v. Canada (Minister of Citizenship and Immigration)* [2005] 138 A.C.W.S. (3d) 912

- Facts: Saldivar broke off her engagement and started a lesbian relationship with the wife of the Mexico City Mayor's Private Secretary. Her lover's husband threatened the two of them. He

also threatened to harm her family (para 1). The board did not find her to be credible and denied her refugee status because she had an internal flight alternative. The board held that she could have moved to Monterrey and Guadalajara where her lover's husband's political influence could not reach (para 4).

- Von Finckenstein J: The judge agreed with the board. It is unreasonable to think that an aide to the mayor of Mexico city would have any influence outside of Mexico City, regardless of the level of corruption within the Mexican administration.

*Garcia v. Canada (Minister of Citizenship and Immigration)* [2005] 139, A.C.W.S. (3d) 1065.

- Facts: Garcia had been subject to verbal abuse and sexual violence as well as extortion for money from Mexican police in his hometown. While the board accepted these facts, it rejected his refugee claim because it held that Garcia had an internal flight alternative (Mexico City) (para 1).
- Mactavish J. : A new hearing was ordered because the Board did not directly address violence against openly gay men in Mexico City and whether or not the claimant could have lived safely in Mexico City (para 16). Although there is a presumption that the Board considered all evidence before it, the Board has an obligation to “analyze the evidence, and to explain why it prefers other evidence on the point in question” when there is “important evidence that runs directly contrary to the Board’s finding on a central issue” (para 12).

*Blanco v. Canada (Minister of Citizenship and Immigration)* [2001] 110 A.C.W.S. (3d) 347.

- Facts: Applicant was a lesbian whose husband in Mexico physically abused her. The board ruled that since he was a drug addict who rarely worked, he would have little influence outside his immediate environment and he would not be able to find her in one of Mexico’s big cities. The board also ruled that lesbians in Mexico had less to fear than gay men (para 3). The applicant applied for judicial review.
- Nadon, J.: Judicial review denied. The judge fully agreed with the board.

#### **IV: Government Organizations**

##### **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://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=451639>>.

- **Two news sources reported incidents of alleged police misconduct against lesbians in Mexico City (CIMAC 28 June 2006; AFP 22 June 2007)**
- **Homosexuals and bisexuals threatened with extortion and detention by police officers, according to university study**
- **Sexual abuse by police against vulnerable persons, including migrants and police detainees, is also noted**

The alleged misconduct in the news reports included police harassment, unwarranted questioning, verbal and physical abuse, and incidents of groping. The university study surveyed 506 homosexual men, bisexuals and lesbians in Mexico City and discovered, among other things, that 11 percent of respondents mentioned they had been threatened with extortion and detention by police officers.

*Mexico: Situation and treatment of homosexuals (2006 - May 2007)*, 15 June 2007, online: < <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=469cd68f2&skip=0&query=homosexuals%20mexico>>.

- **Homophobia prevalent in Mexico, especially in rural districts and among older population**
- **Several advancements in law and policy are present on a regional and national scale**
- **The methodology used to estimate the number of murders attributed to homophobic violence is controversial**
- **The 2007 murder of a prominent gay activist has raised doubts about police investigations into alleged homophobic crimes**

Responses to a 2007 nationwide survey showed that those aged 18-29 were much more tolerant than those over 50, although for the former group, acceptance of homosexuality was only at approximately 50%. The state of Coahuila passed in 2007 a law allowing same-sex couples to enter legally-recognized civil unions; this law reportedly covers the entire country, meaning that the state is obliged to protect a same-sex couple's rights "no matter where they live in the country" (Copley News Service 5 Mar. 2007).

*Mexico: Services or support for lesbians in Mexico City (counselling, legal assistance, shelters, support groups, political groups)*, 21 January 2002, online: < <http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=432705>>.

- **Overview of services available for lesbian and bisexual women in Mexico City**

## **National Council to Prevent Discrimination – CONAPRED**

([www.conapred.org.mx/estudios/docs/E13-2008.pdf](http://www.conapred.org.mx/estudios/docs/E13-2008.pdf)) ([www.conapred.org.mx/estudios/docs/E12-2008.pdf](http://www.conapred.org.mx/estudios/docs/E12-2008.pdf)) ([www.conapred.org.mx/estudios/docs/E-02-2005.pdf](http://www.conapred.org.mx/estudios/docs/E-02-2005.pdf))

- **Series of reports from CONAPRED, an organ of the Mexican state created by the Federal Law to Prevent and Eliminate Discrimination**
- The compiler is not fluent in Spanish and so cannot summarize these reports, but they are included for further reference

## **V: Non-Government Organizations**

### **Amnesty International**

*Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system* (2007), online:

<<http://www.amnesty.org/en/library/asset/AMR41/002/2007/en/7da66e32-d3c5-11dd-8743-d305bea2b2c7/amr410022007en.html>>.

- **Lack of credibility on the part of public institutions responsible for enforcing the law**
- **Those who suffer the most abuses belong to socially marginalized communities, including those who identify as LGBTQ**

“The failure to consistently hold to account officials responsible for committing abuses or failing to carry out their duties diligently to investigate crimes, whether committed by non-state actors or other officials, remains a key obstacle to ending impunity and ensuring the impartial and effective application of justice.”

Mexico: *Fear for Safety* (2005), online:

<<http://www.amnesty.org/en/library/asset/AMR41/025/2005/en/9effc7fb-d4cd-11dd-8a23-d58a49c0d652/amr410252005en.html>>.

- **About the murder of sexual minority rights activist Octavio Acuna**
- **Municipal police harassment of sexual minorities is noted; as well as “official unwillingness to take allegations of homophobic violence seriously”**

## **International Lesbian and Gay Association**

*Transphobia in Mexico and America*, 15 May 2009, online:

<[http://trans.ilga.org/trans/welcome to the ilga trans secretariat/campaign/campaign against violence of trans population/intolerance list/briefings/transphobia in mexico and america](http://trans.ilga.org/trans/welcome%20to%20the%20ilga%20trans%20secretariat/campaign/campaign%20against%20violence%20of%20trans%20population/intolerance%20list/briefings/transphobia%20in%20mexico%20and%20america)>.

- **Makes reference to transphobic murders**

Murders committed against gays or transgendered people are often characterized by the police as crimes of passion, these crimes are often extremely violent and brutal. There has been 29 murders of transgendered people in Mexico from between the years of 2007-2009. The average age of the victims is 27 years old. Of the 29 murders, 14 of the victims do have a name. The Citizens Commission Against Hate Crimes Homophobia reported 3 monthly murders of LGTTTB people since 2005.

## **Federal District Commission of Human Rights – Mexico**

THE FEDERAL DISTRICT COMMISSION OF HUMAN RIGHTS SPECIAL REPORT ON HOMOPHOBIA AND HATE CRIMES – Press Bulletin 147/2007 (28 July, 2007), online:

<<http://www.cd hdf.org.mx/index.php?id=pibol14707>>.

- **Book documents lack of state prosecution for hate crimes directed at homosexuals**

The book *Homophobia. Hate, Crime and Justice, 1995-2005* reveals that during the decade covered in the edition, 387 hate crimes due to homophobia were committed in Mexico, 98% of which have gone unpunished up until now. Between 1995 and 2005, 126 homosexuals were murdered in Mexico City alone; again, the impunity with which these crimes were committed was noted; hate crimes were “not on the agenda” of the authorities. “The ombudsman from the capital (Mexico City) said he was deeply concerned that Mexico City has the worst record for hate crime because of homophobia, with 137 crimes in the period 1995-2005.”

## **VI: Scholarship**

Ortiz-Hernandez, L. and Garcia Torres, MI. “Effects of violence and discrimination on the mental health of bisexuals, lesbians, and gays in Mexico City”. [Spanish] *Cad Saude Publica* 2005 May-Jun 21(3):913-25. Abstract online:

<<http://www.ncbi.nlm.nih.gov/pubmed/15868050>>.

- **“The study found the following prevalence rates: 39.0% suicidal ideation, 15.0% suicide attempts, 27.0% mental disorders, and 18.0% alcoholism. Prevalence of alcoholism was 21.0% among bisexual and lesbian women, which is higher than in other women. Discrimination was correlated with suicide attempts and mental disorders, whereas violence was a risk factor for suicidal ideation, suicide attempts, mental disorders, and alcoholism.”**