



Venezuela

Country report for use in Canadian refugee claims based on persecution on the basis of sexual orientation or gender identity

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By: Sexual Orientation and Gender Identity Working Group

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I. Introduction

Venezuela is a functioning democracy which has ratified several significant international human rights treaties and has a constitution that includes broad anti-discrimination provisions. The Immigration and Refugee Board of Canada has therefore set the bar high for refugee claims from citizens of Venezuela.

That said, LGBT Venezuelans face several social and legal obstacles to their freedom and security: a history of serious abuses perpetrated by police; legal amendments that expressly rule out any form of marriage for same-sex couples; discrimination in the workforce; and difficulty in having their constitutional protections enforced.

Transgender persons are particularly at risk: according to Venezuelan law, a person cannot change his or her gender on officially-issued identity documents, which affects the individual's access to social services and leaves them vulnerable to abuse.

In the 1990s the Immigration and Refugee Board of Canada granted refugee status to several LGBT claimants from Venezuela, all of whose claims featured discriminatory and usually brutal treatment by police due to their sexual orientation. In 2010 and 2011, however, the Board decided three cases against claimants from Venezuela, giving significant weight in their rulings to measures taken by the Public Ministry in 2009 to combat impunity and human rights abuses



committed by the police force. Government and NGO reports since 2009 have indicated that impunity and brutality are ongoing problems despite these measures, but the Board has so far not been persuaded by these arguments. Venezuela is not a Designated Country of Origin for the purposes of Canadian law.

II. Legislation

1. *Constitution of the Bolivarian Republic of Venezuela (1999)*

English translation provided by the Council on Foreign Relations:

Online: <http://www.cfr.org/venezuela/constitution-bolivarian-republic-venezuela-english-translation/p30449>

- **No specific provision prohibiting discrimination on grounds of sexual orientation, however, there is a broadly worded anti-discrimination clause that has been interpreted by the Venezuelan Supreme Court to provide protection to LGBT persons in 2008.**
- **A constitutional amendment (Article 77) explicitly defines marriage as between a man and a woman; common law relationships are also constitutionally defined this way.**

Article 21:

All persons are equal before the law, and, consequently:

1. No discrimination based on race, sex, creed or social standing shall be permitted, nor, in general, any discrimination with the intent or effect of nullifying or encroaching upon the recognition, enjoyment or exercise, on equal terms, of the rights and liberties of every individual.

2. The law shall guarantee legal and administrative conditions such as to make equality before the law real and effective manner; shall adopt affirmative measures for the benefit of any group that is discriminated against, marginalized or vulnerable; shall protect in particular those persons who, because of any of the aforementioned circumstances, are in a manifestly weak position; and shall punish those who abuse or mistreat such persons.

Article 77:

Marriage, which is based on free consent and absolute equality of rights and obligations of the spouses, is protected. A stable, de facto union between a man and a woman which meets the requirements established by law shall have the same effects as marriage.



2. *Civil Code of Venezuela*

Online:

<http://photos.state.gov/libraries/venezuela/325692/fleitasmd/Codigo%20Civil%20Venezolano.pdf>

- **Article 44 specifies that only a marriage between a man and a woman will have legal effect.**
- **Legislation to repeal Article 44 and give legal force to same-sex marriage has been proposed several times but as of the time of this report has not yet passed.**

3. *Venezuela Penal Code*

Online: http://www.wipo.int/wipolex/en/text.jsp?file_id=235415 (in Spanish)

- **Article 375 discusses the age of consent. It is the same age of consent for same-sex or opposite-sex sexual activity.**

Note: there are no legal prohibitions against male/male or female/female sexual relationships, or against LGBT people serving in the military

III. Canadian Jurisprudence

Immigration and Refugee Board of Canada Decisions

1. *RPD File No. TB0-06045*, [2011] RPDD No 233

Holding: the claimant is not a Convention refugee nor a “person in need of protection”

- **Denial of status was on grounds that state protection was available and that there was a viable Internal Flight Alternative.**

The claimant said he had been assaulted several times in Venezuela due to his sexual orientation, including once being shot, and feared further physical harm if he were to return. The claimant was HIV positive, but did not claim to lack adequate medical care in Venezuela, so this issue was not a factor. The Board did not find the claimant credible, which was a factor in their decision.

The Board found that the claimant had failed to rebut the presumption of state protection. They determined that Venezuela is an effectively democratic country, and for that reason the threshold for proving that state protection was sought and unavailable is high – the claimant must show that he has “taken all reasonable steps in the circumstances to seek protection”



[para 25]. The claimant explained that his reluctance to go to the authorities was due to his mistrust of the police and submitted documentary evidence of their mistreatment of homosexuals. However, the Board found that national reforms to curb police impunity that were initiated in 2009 constituted “serious efforts to address the issues of protection for all its citizens” and therefore that adequate state protection was available.

Additionally, Caracas was determined to be a viable Internal Flight Alternative.

On Appeal: the significance of the applicant's HIV status was addressed but the Board's decision was upheld.

See: *Ferrer v. Canada (Minister of Citizenship and Immigration)*, [2012] FC 1058

2. *RPD File No. TB0-06052*, [2011] RPDD No 234

Holding: the claimant is not a Convention refugee nor a “person in need of protection”

- **Denial of status was on grounds that state protection was available and that there was a viable Internal Flight Alternative.**

This decision is for the partner of the claimant in the above case (*RPD File No. TB0-06045*, 2011 RPDD No 233); the two had travelled to Canada together with the intention of making claims for refugee protection. The Board separated their claims due to differences in facts given in each claim.

The claimant described experiencing harassment and discrimination in familial and social contexts, and being fired from a part-time job after being verbally harassed by customers at work. He also discussed two incidences of assault: in the first case being bound, raped, and robbed by several men at the university he attended, which he did not report to the administration or to the police; in the second case, being attacked outside of a gay bar, which he did report to police. He stated that the police did not assist him, did not write a report, and ridiculed him.

The Board's decision not to allow the claimant refugee status was on the same grounds as those of his partner's case, including issues of credibility.

3. *RPD File No. MA9-12938*, [2010] RPDD No 583

Holding: the claimant is not a Convention refugee nor a “person in need of protection”

- **Denial of status was on grounds that state protection was available and that there was a viable Internal Flight Alternative.**



By his own testimony, the claimant suffered only mild harassment after being “outed” at work in Venezuela. The Board turned its attention to whether he would face persecution if he returned. They cited several NGO and government reports that examined aspects of human rights in the country, but did not mention sexual orientation issues, which the court took as an indication that there was no significant problem in this regard. As well, the Board identified Caracas as an Internal Flight Alternative.

4. *R.M.W. [1998] C.R.D.D. No. 76.*

Holding: the refugee claim was denied.

- **Denial of claim on grounds that claimant lacked credibility.**

The claimant was a homosexual Venezuelan from Caracas who had lost a job because he did not hide his sexuality and latterly had to maintain secrecy about his sexual identity in order to preserve subsequent positions. He had also experienced beatings, detentions, arbitrary fines and robbery by police; extortion from private actors; and beatings and blackballing by a former lover who wanted to maintain the secrecy of their relations.

The Board doubted the credibility of the claimant’s account of his abuses at the hands of a powerful former lover. The report noted that, with respect to gays and lesbians, “Venezuela’s human rights record is mixed.” While homosexuality is more tolerated in Caracas, homosexuals are treated harshly elsewhere in the country and abuses do occur at the hands of security forces. The Board doubted, given the incredulity of his description of his former love affair, the veracity of his account of police abuse.

5. *C.R.H. (Re) [1997] C.R.D.D. No. 178.*

Holding: refugee claim denied.

- **Denial of claim on grounds that claimant lacked credibility.**

The Venezuelan claimant alleged that he had been denied the right to serve in the military and had been verbally harassed and detained by police. He had a relationship with an army colonel who he said persecuted and attempted to murder him when the relationship ended. The claimant fled to Caracas without success and then Valencia. In January 1994, he was arrested in a raid on a gay bar.

The Board doubted the claimant was homosexual based on his lack of knowledge about homosexuals in Venezuela, nor did the Board find his account of the relationship with the colonel plausible.



6. *E.N.U. (Re)* [1997] C.R.D.D. No. 67.

Holding: refugee claim denied.

- **Denial of claim on grounds that claimant lacked credibility.**

The Board doubted the claimant's allegation that he was actually gay. "The remainder of his testimony regarding his sexual identity and his subsequent homosexual activities was vague and generalized, e.g., dressing up in his sisters' clothes when he was 10; cruising a park in San Cristobal; a short-term secret liaison in Nueva Esparta. He knew little about the situation of gays in Venezuela, information which the panel would expect him to know if he was aware of his own sexual orientation since he was a teenager."

7. *C.L.Q. (Re)* [1996] C.R.D.D. No. 145.

Holding: Refugee claim granted.

- **Claim granted on the basis of police harassment, violence, and detention under the Law of Vagrants and Crooks (has since been repealed).**

The claimant was a lesbian from Venezuela who had been detained by police, threatened with rape and sexually touched.

The Board accepted evidence from authoritative sources showing the subjection of homosexuals to police harassment and violence and detention of gays under the *Ley Sobre Vagos y Maleantes* (Law of Vagrants and Crooks)*. The Board noted that the dearth of documentary evidence on lesbians in Venezuela could be attributed to the overall invisibility of the group. There were accounts of a Caracas couple being held at gunpoint by police, extortion, rape in detention and extreme physical violence against both gay men and women. The Board also determined that there was no viable Internal Flight Alternative in Venezuela.

*Note: this law has since been repealed.

8. *J.J.Y. (Re)* [1996] D.S.S.R. No. 50.

Holding: Refugee claim granted.

- **Claim granted on basis of membership in an LGBT group and corruption in municipal officials.**

The claimant had citizenship in Columbia and Venezuela. The Board determined: "La preuve présentée révèle que le revendicateur a été l'objet de persécution de la part des autorités vénézuéliennes à cause de son orientation sexuelle et de son implication au sein du comité



exécutif du groupe social "la Fondation Vie pour la vie" et dans le cadre du programme Action Sida combinée à sa participation dans ce contexte, de dénonciations contre la corruption et la fraude perpétrée par des élus municipaux". The claimant had been interrogated, humiliated, beaten and insulted twice in the span of three years by metropolitan police for his activist activities. The Board also noted the corruption of municipal officials and the precarious situation of homosexuals in Venezuela. It also noted the application of the Law of Vagrants and Crooks* to homosexuals.

*Note: this law has since been repealed.

9. *A. (G.D.) (Re) [1995] C.R.D.D. No. 92.*

Holding: Refugee claim granted.

- **Claim granted on the basis of police harassment and detention under the Law of Vagrants and Crooks (has since been repealed).**

The claimant was from Caracas and a member in a gay activist group. He had been arrested and harassed by police several times and also dismissed from his work position when police revealed his sexual identity to his employer.

The Board accepted that the claimant had well-founded fear of persecution based on documents showing political instability, high levels of corruption, serious human rights abuses by police and failure to punish these abusers as well as victimization of activists. In addition, the Board accepted that the situation of homosexuals was "very poor" and that homosexuals were subject to police harassment and intimidation. They were also detained under the country's Law of Vagrants and Crooks* and, in prison, subject to serious abuses.

*Note: this law has since been repealed.

10. *N. (O.I.) (Re) [1995] C.R.D.D. No. 112*

Holding: Refugee claim granted.

- **Board accepted that a society hostile to homosexuals would be even more hostile to transgender people.**

The claimant, a transgender female from Venezuela, was deemed a Convention refugee. The claimant had been detained by police, subject to extortion and shot with a pellet gun. The Board accepted documentary evidence on police abuse (raids, beatings, public humiliation and arbitrary detention) and general threats to the lives of transgendered persons from non-state actors.



According to the Board, "documentary evidence portrays a society hostile to homosexuals and even more hostile to transvestites and transsexuals. We note that this documentary evidence corroborates the claimant's testimony that police do not take complaints from transsexuals and homosexuals seriously and do not even attempt to make a genuine effort to provide protection to homosexuals. Indeed, the agents of persecution are often state authorities themselves. We find that the claimant has met the onus of rebutting the presumption of state protection."

11. *X.M.U. (Re)* [1995] C.R.D.D. No. 146.

Holding: Refugee claim granted.

- **Claim granted on basis that there was no assurance of adequate protection and no realistic internal flight alternative.**

The claimant reported a number of brutal experiences and police abuses (including raids, detention and rape). Reports confirmed the persecution of LGBT persons in Venezuela and the discriminatory use of the Law of Vagrants and Crooks* to detain homosexuals. The Board criticized the claimant's unwillingness to seek protection, stating that the hostility of some police members to the gay community did not illustrate that the entire law enforcement division would be opposed to offering assistance, but realized that a homosexual "might still not be assured of adequate protection, in a country where ordinary citizens may be generally assured of protection." There was, moreover, no realistic internal flight alternative for the claimant.

*Note: this law has since been repealed.

IV. Domestic Jurisprudence

1. Supreme Court of Justice (*Consejo Supremo de Justicia*) decision on October 14, 1997
Online: <http://www.correodelcaroni.com/index.php/opinion/item/27861-ley-de-vagos-y-maleantes>

- **The Law of Vagrants and Crooks (*Ley de Vagos y Maleantes*) was repealed, making same-sex sexual conduct legal in Venezuela.**

V. International Law

UN Treaties

Treaty	Date of Signature	Date of Ratification
ICCPR	1969	1978



ICCPR – First OP	1976	1978
ICCPR – Second OP	1990	1993
ICESR	1969	1978
ICESR – First Op	2011	N/A
CAT	1985	1991
CAT – First Op	2011	N/A

Human Rights Committee

1. “Fourth periodic report of States parties due in 2005; Bolivarian Republic of Venezuela” (29 April 2013)

Online:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssbM7JCwZtFkfb2j9CZsrU4MqZ3yM92SWgn9haYfnBII1twvTvqUMii1U%2bn2gk2YSm%2b7YHuaXh2%2fNi%2fY5l%2byu6BNrrThQjbL3yFLivcdLF>

- **Report submitted by Venezuelan government based on their commitments under the ICCPR.**
- **No specific mention of LGBTI individuals.**
- **The Public Prosecution Service in addition to other areas of the justice system have provided citizens with a robust system for investigating and publishing human rights violations.**
- **Measures have been taken to ensure Freedom of expression is guaranteed; continued existence of private media outlets and the encouragement of having organized communities freely express ideas.**

This article, published by the state of Venezuela discusses the positive action taken by the government since 2001 when the committee delivered conclusions about the country’s compliance under the treaty. For example, they have established The Ministry of People’s Power for Women and Gender Equality in 2009, they have integrated applicants for refugee status into the economic system through social programmes, giving them the right to work, health-care, etc., and many other initiatives as stated throughout the document. They claim that the rights of persons traditionally most subject to exclusion – children, women, persons with disabilities, indigenous persons, and other vulnerable groups – are adequately protected through an effective legal framework.

2. “Concluding observations of the International Covenant on Civil and Political Rights” (April 2001)

Online:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsmg1D%2b4Wvg6LhA1iuk%2bHo%2bWYkprGindOLf6iDvgpobWKR%2f6GLaB8Qgc4pwS0z5Wc4Y54f4kseh1%2f36lvOW10hQqZSBUWZwpxK2z3jvtxzvqg>



- **The committee views positively that the Constitution is designed to recognize and guarantee various human rights.**
- **There are various concerns related to reports of disappearances, extrajudicial executions, reports of torture and excessive use of force, lack of detailed information on detention by police officers, the deficient independence of the judiciary, dangerous conditions of state prisons, information on trafficking in women in the country, treatment of persons seeking asylum or refuge in Venezuela, violence against women, and early age for consensual sex/marriage for women.**

The Committee has offered various recommendations to alleviate these concerns including rapid investigations into cases of disappearance, develop an independent body to receive all reports of excessive use of force, speed up trials, provide and review information related to the independence of the judiciary, seek assistance from international bodies dealing with the norms of general international law and the adherence to international covenants, set up preventative measures to eliminate female trafficking, and take other precautions to protect women's rights.

Committee on Economic, Social and Cultural Rights

1. "Third Period Reports of States Parties due in 2006 – Bolivarian Republic of Venezuela" (May 2013)
Online:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fVEN%2f3&Lang=en
 - **The state claims that their Constitution is grounded in Human Rights protections; significant changes have been made resulting in greater governmental legitimacy.**
 - **The government claims that there has been a substantial improvement in the living conditions of the Venezuelan people, leading towards an inclusive, equitable, just, and democratic society.**
 - **Venezuela has used education, communication and information activities to prevent HIV infection.**
2. "Concluding observations of the Committee on Economic, Social and Cultural Rights" (May 2001)
Online:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/1/Add.56&Lang=En



- **There are no recommendations or observations specific to LGBTI individuals.**
- **The Committee notes with appreciation the adoption of the Violence against Women and the Family Act and the Equal Opportunities for Women Act, as well as the recent establishment of the autonomous National Women’s Institution.**
- **The Committee is concerned with the slow adoption of their National Plan of Action for Human Rights.**

The committee offers various recommendations including ratifying the 1951 Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Furthermore, they suggest that the state engage in various activities to lower the rates of domestic violence and other forms of abuse faced by women and children in Venezuela. The Committee recommends that the State party seek advisory services from the Office of the United Nations High Commissioner for Human Rights concerning the overall implementation of the 1997 National Plan of Action for Human Rights, and in particular the inclusion of economic, social and cultural rights of the Plan. They also urge that the State party to organize an awareness-raising campaign to educate the public on their economic, social and cultural rights, and to target in particular magistrates, police officers and other responsible officials.

Committee Against Torture

1. “Venezuela Concluding Observations” (December 2014)

Online:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAghKb7yhshX84epH%2fmHxfR5zIRiHa%2bzIFLxgpTNfzVtX2y0JtXocw7wBucHyPuYBp8cWFXOBNwdwMEr6M4Mcppk4yd%2fbdsBCx%2bo4bWf2Vg7AoDPUztQm> (French)

- **Committee positively noted the adoption of various policies, including the establishment of courts specialized in violence against women and the enactment of a Special Act in 2013 to prevent and punish torture as well as other inhumane treatment of people.**
- **Concern that out of 31,096 complaints of human rights violations; only 3.1% received action from the crown.**
- **The committee is unhappy with the progressive increase in the number of violent acts against women.**
- **Does not include any information specific to LGBTI individuals.**

The committee is concerned about various issues relating to arbitrary arrests, brutal assaults by police forces, lack of independence of the judiciary, violence against journalists and women, and prison conditions. These are related to access to judicial bodies, more time-sensitive investigations, strengthening procedures to educate citizens on gender-based violence,



greater training for law enforcement officers, and to opt emergency measures to ensure the full independence and security of tenure of the judiciary in accordance with international standards.

2. “Combined Third and Fourth Periodic Reports of States Parties due in 2004 – Bolivarian Republic of Venezuela” (September 2012)

Online:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAghKb7yhshX84epH%2fmHxfR5zIRIHa%2byNmns6Sin6NKh4GWPBTzTbvAAfjUgqBWY8%2bz%2fOvYDRA9MzfwCfzq13%2f0tHuiW0FpVdu1bP%2bymwYPFT2VrFVjGv>

- **Outlines Venezuela’s obligations and actions concerning torture.**
- **Does not mention anything specific to LGBTI individuals.**

3. “Report for the Committee against Torture during its revision of the combined 3rd and 4th periodic reports submitted by the Bolivarian Republic of Venezuela” (November 2014)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fVEN%2f18664&Lang=en

- **In Venezuela, LGBTI persons are dehumanized by cruel, inhuman and degrading treatment.**
- **There is no precise data due to a lack of complaints made by victims because of fears of being re-victimized and mistrust in the justice system.**
- **Police officers and members of the National Guard have been systematically identified as perpetrators of violence against LGBTI persons.**
- **Increasing number of reports of arbitrary arrests and illegal raids.**
- **In healthcare establishments, LGBTI people are subjected to psychological abuse, distress, humiliation, and discrimination in treatment of HIV and AIDS.**
- **In schools, students and even teachers tease, harass, degrade, and physically punish LGBTI students.**
- **In prisons, excessive force is used on LGBTI persons and they are subjected to psychological, physical, and sexual attack.**
- **Trans women are imprisoned with men.**
- **Between January 2010 and September 2014, conditions for the work of human rights defenders deteriorated significantly in Venezuela.**

Committee on Economic, Social and Cultural Rights

1. “Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights” (May 2013)



Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fVEN%2f3&Lang=en

- **No mention of LGBTI rights.**

American Convention on Human Rights, Organization of American States

Online: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_rights_sign.htm

***Note:** Venezuela ratified this treaty on June 23, 1977 but denounced it on September 10, 2012

VI. Government Reports

Canada

1. Immigration and Refugee Board of Canada, *Situation and treatment of homosexuals, particularly in Caracas; recourse available to those who have been harassed based on their sexual orientation (2006-August 2009)*, (September 17, 2009)

Online: <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=452554>

- **Describes a robust LGBT social scene in Caracas, including a gay pride parade, although typically sexual orientation it still not expressed openly in public.**
- **According to one Caracas-based lawyer, "50% of homosexuals report at least one incident with public forces during the previous 6 months (verbal or physical violence, blackmail, etc.)."**
- **The Venezuelan Supreme Court found in 2008 that the anti-discrimination provisions in the constitution extend to sexual orientation; however, one lawyer claimed that this was a theoretical protection and that it was in reality "almost impossible" for citizens to find recourse in it.**

2. Immigration and Refugee Board of Canada, *"Treatment by government officials of persons with HIV/AIDS, in particular with regard to the distribution of anti-retroviral drugs; treatment by government officials of gay men with HIV/AIDS"*, (September 23, 2009)

Online: <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=452565>



- HIV-positive persons receive appropriate medical treatment from the government, but may face discrimination and mistreatment, including possibly from health care workers.

United States

1. U.S. Department of State, *Country Reports on Human Rights Practices for 2013* (2013)
Online: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220479>
 - Venezuelan leadership has become increasingly authoritarian over the past few years and exercises "significant control over the legislative, judicial, human rights ombudsman, and electoral branches of government."
 - The judiciary's interpretation of the constitution includes prohibition of discrimination based on sexual orientation, but this is rarely enforced; many LGBT victims of hate crimes did not report them to police, and those who did could be "subjected to threats or extortion if they filed official complaints."
 - Transgender community more frequently experienced hate crimes; also, due to the legal prohibition against changing official gender and resulting lack of official identification and access to social services, transgender individuals were particularly vulnerable and often became victims of human trafficking or prostitution.
 - Verbal and physical abuses of LGBT people were common in schools and on university campuses.
 - Advocates claim that HIV-positive people are discriminated against.

VII. Reports from International Agencies and Non-Governmental Organizations
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Amnesty International

1. "Venezuela's Withdrawal from Regional Human Rights Instrument is a Serious Setback" (September 2013)
Online: <http://www.refworld.org/docid/522ee58b4.html>
 - Venezuela withdrew from the American Convention on Human Rights leaving citizens without further protection from Inter-American Court of Human Rights.
 - The Inter-American Commission will still be able to monitor Venezuela's compliance with human rights obligations allowing citizens to still send petitions to the organization.



- **This decision will limit access to the jurisdiction of the Inter-American court.**
- **The withdrawal has spurred confusion given Venezuela's recent efforts to ratify human rights instruments in the Americas.**

This brief article summarizes Venezuela's decision to opt out of the American Convention on Human Rights and the results it would have on the human rights of the population. Comments in the article demonstrate the view that depriving Venezuelans of the option to turn to the Inter-American Court of Human Rights is "scandalous." Others see contradiction in the Venezuelan government's actions of encouraging a unified human rights system while taking such action. The true effect of the action still allows citizens to file claims to the court when they believe their human rights are in violation since the country is still part of the Inter-American system. However, there will be greater limits imposed on access to the Inter-American court after September 10, 2013.

Human Rights Watch

1. "Together, Apart – Organizing Around Sexual Orientation and Gender Identity Worldwide" (May 2009)

Online: <http://www.hrw.org/sites/default/files/reports/lgbt0509web.pdf>

- **Venezuela listed as one of the countries with protections against discrimination based on sexual orientation, but not against gender identity.**
- **A campaigner stated that in Venezuela, nine out of ten transgender individuals would be unwilling to visit a doctor in case of a serious illness because they know they will be mistreated.**
- **Sexuality in most Venezuelan schools is only spoken about in the context of reproduction of plant species. Where it is discussed, heterosexuality leading to marriage is the only topic mentioned.**
- **The Catholic Church is still very influential in the entire Latin American region.**
- **Venezuelan activists lament that the gay rights movement in Venezuela lagged behind movements in neighboring Latin American countries; these neighbours were not providing sufficient assistance to less fortunate countries.**

This article discusses the status of sexual orientation and gender inequality around the world and specifically in Latin America. The report notes that progress with LGBT rights has had an uneven reach. Brazil, a transgender activist pointed out, has the largest Pride parade in the world, but also some of the highest levels of hate crimes against LGBT people. Laws used to arrest transgender people in public places along with sex workers, gay men, and lesbians are still on the books across South America. The region is still highly influenced by the Catholic Church. In Venezuela, protection has not been granted to transgender individuals, many of



whom fear visiting medical experts due to potential mistreatment. Although sexual orientation is protected against discrimination in the country, the school system largely ignores or focuses on a heterosexual view of sexuality.

International Gay and Human Rights Commission

1. "Venezuela: Protest the Murder of a Transwoman in Caracas" (June 2009)
Online: <http://iglhrc.org/content/venezuela-protest-murder-transwoman-caracas>
 - **27 year old transgender woman injured and killed as a result of 6 shots fired at her by an unknown individual.**
 - **Fourth murder to affect the transgender community in Caracas in six months. All have been reported but there has been no action from the prosecutor.**
 - **The International Gay and Lesbian Human Rights Commission (IGLHRC) joins Venezuela Diversa A.C. to demand an exhaustive investigation into these crimes and preventative measures be put in place.**

International Lesbian, Gay, Bisexual, Trans, and Intersex Association

1. "An Interview with Venezuelan Trans Rights Activist, Tamara Adrian" (March 2013)
Online: <http://ilga.org/an-interview-with-venezuelan-trans-rights-activist-tamara-adrian/>
 - **Transgender organizations around the world began to have a proper voice in 2005/2006. Before that, they were advocated for through gay rights groups. It is the work of a few, more educated, transgender activists that led to a fuller gender protective movement all around the world.**
 - **The transgender group is the most vulnerable out of all the groups involved in the LGBTI movement. Many have poor education because they were bullied and quit school at a very early age; condemned for having low proficiency in a variety of fields.**
 - **Venezuela was one of the very first countries in the world to legally recognize transgender identity in 1977 and there was great progress until Chavez took office in 1998.**
 - **There is a local law, entered into effect in 2010, which allows for an individual to change their name and sex, although the government is only guaranteeing a change in name.**
 - **There is no public health assistance for transgender people; unless they can afford private medical treatment, they often attempt to fulfill their own hormonal and other needs.**
 - **Transgender men are more present in movements because they tend to access private health services and have a higher level of education than**



many transgender women; they are perceived much more positively than trans women.

Tamara Adrian is a Venezuelan lawyer, law professor, and transgender activist. She discusses the progress of transgender activism in 2005/2006 when it finally separated from the more general gay rights movement into a separate initiative. Despite severe discrimination against the transgender community, Venezuela was one of the first countries to legally recognize transgender identity and made very progressive steps until the Chavez government in 1998, where equality rights ceased to advance. There is resistance in Venezuela to legally recognize sex changes, although name changes are permissible; the motion will have to be brought forward to the National Assembly through petition. Furthermore, transgender individuals have very limited access to public health services and must often treat themselves if they cannot afford to go to a private health practitioner. Transgender men are beginning to play a greater role in the transgender movement due to a more positive stigma in the country than experienced by transgender women.

2. “Top UN Human Rights Body Condemns Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity” (September 2014)

Online: <http://ilga.org/top-un-human-rights-body-condemns-violence-discriminationbasis-sexual-orientation-gender-identity/>

- **Venezuela supported a resolution that asks the High Commissioner of Human Rights to update a 2012 study discussing violence and discrimination on the basis of sexual orientation and gender identity.**
- **Resolution is meant to show ongoing support for the rights of the LGBTI community to individuals around the world and that the issue remains on the agenda of the human rights council.**

VIII. Newspaper and Media Reports

1. “Miss Venezuela Wins Global Trans Pageant,” Darren Wee, Gay Star News, November 2014.

Online: <http://www.gaystarnews.com/article/miss-venezuela-wins-global-trans-pageant101114>

- **22 year old Venezuelan was crowned Miss International Queen as part of the world’s largest transvestite and transgender pageant for women.**
- **Transgender activist states that this is the first time a small communist country that highly limits the rights and freedoms of the LGBTQ community have been internationally recognized.**
- **Despite the international hype about the victory, local media did not report on the matter because it is a taboo issue in Venezuela.**



2. "Venezuela Government Under Fire for Anti-Gay Slurs," Kejal Vyas and Ezequiel Minaya, The Wall Street Journal, August 2013.
Online: <http://www.wsj.com/articles/SB10001424127887323455104579015431118697694>
 - **Venezuela's leftist government made a series of "anti-gay" remarks about political opponents in the National Assembly after releasing photographs of the high level opposition member hugging other men and mugging the camera while wearing a feather headpiece and shawl.**
 - **The majority government claims that the photographs are proof of the opposition's "moral degradation" and are demonstrate engagement with prostitutes and participation in orgies.**
 - **Activist groups say that the slurs exemplify a pattern of increased demonization of homosexuality in the political arena and that politician use these types of statements to defeat the opposition and to scandalize the public with issues or "indecent" instead of issues related to money-corruption.**
 - **President Maduro attempted to rectify the issue by waving a rainbow-coloured flag on television, but continued to accuse the opposition of having orgies, saying what was released was only 1 % of what had been found and that the rest could not be released to protect the human condition.**
 - **Political science professor claims that the incident will go down as one of the most aggressively homophobic acts in contemporary Latin America.**
3. "Venezuelan LGBT Movement Submits Proposal for Same Sex Marriage," Ewan Robertson, venezuelananalysis.com, January, 2013.
Online: <http://venezuelananalysis.com/news/10319>
 - **Venezuela's LGBT movement gathered outside National Assembly to give politicians a proposal with over 21,000 signatures of support, which would lead to the legalization of same sex civil marriage.**
 - **The movement was led by the Equal Venezuela Civil Association, and had received the support of many politicians in the majority and opposition governments.**
 - **The Venezuelan Catholic Church resisted the proposal; there are concerns that the predominance of traditional religious views in Venezuela will hinder the cause.**
 - **In Venezuela, law movements like these can introduce draft legislation that must be debated by assembly deputies if enough signatures are gathered.**
4. "Venezuela: Gays Attacked, Harassed By Police," Humberto Márquez, The World Post, March 2010



Online: http://www.huffingtonpost.com/2009/11/04/venezuela-gays-attacked-h_n_345600.html

- Two Caracas police vans detained 20 – 25 LGBT individuals who were seen at a favourite spot for gays and lesbians in Caracas.
- The identity documents and phones of the detainees were seized by authorities and they were subject to brutal beatings and derogatory insults based on their sexual orientation.
- This incident was one of many arbitrary arrests of LGBT people in Venezuela by police officers who are known to behave in a highly discriminatory manner towards this population – instances of random theft, sexual assault, and shootings by police officers towards members of the LGBT community have been reported.
- Police harassment further infringes the already suppressed rights and freedoms of LGBT communities to access health care and move around public spaces.
- A 2008 survey of GLBTI individuals in major Venezuelan cities showed that 36% had experienced verbal aggression from police, 12% had experienced physical aggression, 20% had experience extortion, and 11% had been deprived of freedoms.

5. “Venezuela Silent on Hate Crimes,” Will Grant, BBC News, June 2009.

Online: <http://news.bbc.co.uk/2/hi/8076379.stm>

- Four transsexual or transgender prostitutes were killed along the same road in the country’s capital city, Caracas, in recent months.
- There has been a visible increase in violence against the transgender community according to Transvenus, a transgender rights group in Venezuela.
- Many of the attacks against transgender individuals do not actually get reported because police often choose not to investigate them. The increased hate crimes against this population often get blurred into the increased criminality generally being experienced in the nation.
- There is no recognition of the transgender community on a legal basis. They are often humiliated and bullied on the streets; a group of young individuals filmed themselves abusing a group of transgender individuals on the street.
- The government argues that steps are being taken to allow sex change operations and public healthcare for transgender individuals. However, a change in the law has not seriously been contemplated and the government claims that the LGBT needs to do more to further their own rights.



IX. Scholarship

1. Elisabeth Jay Friedman, "Gender, Sexuality and the Latin American Left: Testing the Transformation," (2009) 30:2 Third World Quarterly 415.
Online: <http://www.tandfonline.com/doi/abs/10.1080/01436590802681132#.VN6euoc3PIU>
 - **Study of gender/sexuality politics in Brazil, Bolivia, Chile and Venezuela.**
 - **Identifies impediments to progress - entrenched, institutional opposition; lack of commitment from advocates on the left; and in particular, involvement of the Catholic Church in blocking reform.**
2. Tod W. Burke et al., "A Cross-National Comparison of Gay and Lesbian Domestic Violence," (2002) 18:3 Journal of Contemporary Criminal Justice 231.
Online:
<http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fccj.sagepub.com%2Fcontent%2F18%2F3%2F231.full.pdf&ei=zsf8VLejGoW0yQT2rIHgAw&usq=AFQjCNEIqDZqhGNLJzR5G0uLSzVqSWxBbQ&bvm=bv.87611401,d.aWw>
 - **Study on social factors leading to lack of legal protection against domestic violence in same-sex couples.**
 - **Claims that law enforcement and the legal system often turn a blind eye to gay and lesbian victims.**
 - **Venezuelans were found to be distrustful of the courts (61.11% of survey respondents reported such distrust) and were of the opinion that their local police department was biased against homosexuals.**
3. José Ramón Merentes, "Gay Rights in Venezuela Under Hugo Chávez, 1999-2009," in "The Politics of Sexuality in Javier Corrales and Mario Pecheny eds, *Latin America: A Reader on Lesbian, Gay, Bisexual and Transgender Rights*, (Pittsburgh: University of Pittsburgh Press, 2010)
Online:
http://books.google.ca/books?hl=en&lr=&id=BTXjgBFtNbwC&oi=fnd&pg=PA220&dq=venezuela+lgbt&ots=DYhHt2ogRp&sig=wsnMhUR7zfN3_S1Fa6bzI0MKQQ0#v=onepage&q=venezuela%20lgbt&f=false
 - **Commentary on the constitutional position of LGBT Venezuelans.**
 - **The new constitution did not provide protection against discrimination on the basis of sexual discrimination; the Supreme Court has read in that individuals are protected under the broadly-worded anti-discrimination clause, but same-sex couples are not entitled to "claim those rights before**



the state'" the ruling leaves open the possibility for legislative remedies in the future.

4. *Grettel Johana Ostoich Dávila*, "Una visión histórica, social y jurídica de la sexodiversidad en Venezuela: ¿unión civil o matrimonio?" (2014) 1:2 Sapienza Organizacional
Online: <http://erevistas.saber.ula.ve/index.php/sapienza/article/view/5258>

- **In Spanish.**
- **Discusses historical, social, and legal perspectives on same-sex couple and family issues.**