

Murder by Proxy: Killing of LGBTIQ+ persons in the 'Northern Triangle' (El Salvador, Guatemala and Honduras)



ReportOUT



ReportOUT Response to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Call for Input: Killing of LGBTIQ+ persons



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Foreword from the Chair and Lead Trustee, Human Rights Research at ReportOUT

Dear Dr Morris Tidball-Binz - UN Special Rapporteur on extrajudicial, summary or arbitrary executions.

It is a privilege to submit a joint response to your call for contributions to your report on the killing of LGBTIQ+ persons.

Founded in 2019, ReportOUT is a human rights research organisation in the United Kingdom that documents the lived experiences of SOGIESC (Sexual Orientation, Gender Identity, Expression and Sexual Characteristics) people and communities in different nations across the globe. We use our research to inform the public, educate others and to influence governments and organisations about SOGIESC human rights infringements.

By the end of 2023, ReportOUT published six 'deep dive' projects into the lived experiences of SOGIESC communities in Uganda, Zimbabwe, Belize, Morocco, Ethiopia, together with this report on Mongolia. We are proud to be an entirely volunteer-led charity, with volunteers and trustees originating from over thirty nation-states, six of whom contributed to this report.

Along organisations of the Northern Triangle region of Central America (Guatemala, El Salvador and Honduras), Lambda Association, Comcavis Trans, and Catrachas, ReportOUT focused on these three countries, examining unlawful killings of LGBTIQ+ persons, including deaths that may result from State failures to respect, protect and/or fulfil their right to life, and therefore would engage State responsibility. We are delighted to have partnered with local experts to provide insight for this very critical topic.

We trust that our research, compiled by our team and our partners will be a valuable contribution to your final report and we thank you and your team's work for investigating this under-researched topic that resonates so profoundly in countries across the globe today.

Best wishes,

Drew Dalton, Chair of Trustees & Founder of ReportOUT
Phil Thomas, Lead Trustee, Human Rights Research

May 2024



Drew Dalton
Chair of Trustees
ReportOUT



Phil Thomas
Lead Trustee
Human Rights Research

Who are we? The four partners



COMCAVIS TRANS
Comunicando y Capacitando a Mujeres Trans

CA  **RED LÉSBICA**
RACHAS



ReportOUT



Who Are ReportOUT?

Since 2019, ReportOUT have been at the forefront of protecting the human rights of sexual and gender minorities in the United Kingdom and globally. As a registered charity in England and Wales (registered charity number 1185887) we are fearless, determined, and relentless in our belief that human rights are fundamental to advancing the lives of sexual and gender minorities, and their communities. We recognise that we need to succeed in our aims and objectives by also using principles from international development alongside human rights frameworks, and we believe that both approaches should always include sexual and gender minorities as part of them. We align all our work with Agenda 2030, in that no one should be left behind.

Who Are Lambda Association?

Lambda Association is a civil society organisation founded in 2010 and established to advocate for equality, dignity, and participation of people of sexual diversity, based on the exercise of Human Rights and Constitutional guarantees of the State of Guatemala. For more than 10 years, Lambda Association has carried out various projects around three main axes: LGBTIQ+ human mobility, strengthening of community leadership, and recording violence against LGBTIQ+ people. In addition to the above, Lambda Association has implemented advocacy actions and strengthening at the public and social levels to enhance the human rights of LGBTIQ+ individuals.

Continued overleaf...

Who are we?

Who Are Comcavis Trans?

Comcavis Trans was founded in 2008 in response to the needs of transgender individuals participating in support groups for people with HIV, who were affected by discrimination. It is a non-governmental organisation that seeks to make visible the human rights violations against LGBTI individuals in El Salvador, working directly in the departments of Santa Ana, Sonsonate, San Miguel, La Paz, La Unión, Usulután, and Cabañas. Its mission is to engage in political and public advocacy at both the national and international levels for the promotion and defense of the human rights of LGBTI populations, as well as those deprived of liberty, living with HIV, internally displaced, and migrants. Its vision is to contribute to the development, promotion, and implementation of national and international legal frameworks, ensuring compliance with human rights mechanisms that foster a society protective of the dignity and integrity of LGBTI individuals and their fundamental rights.

Who Are Red Lésbica Cattrachas?

Cattrachas is a lesbian-feminist organisation dedicated to the defense of human rights of LGBTTTTI individuals in Honduras. It was founded in 2000 in response to the context of violence against gender and sexually diverse individuals. The media monitoring center and the violent deaths observatory are the epicenter of all the work carried out through different strategic lines. The differentiated approach permeates the different areas of work; from the observatory that is responsible for systematising information, which is later transferred to the legal area to become part of the evidence supporting the various cases of strategic litigation that are part of national and international political advocacy. Likewise, follow-up is carried out on the recommendations of international human rights committees on LGBTTTTI issues and the production of knowledge through publications.

Introduction and methodology

Lesbian, gay, bisexual, trans, queer, intersex, and other gender diverse persons (LGBTIQ+) worldwide face a higher risk of violence, including unlawful deaths, as a result of their perceived or actual sexual orientation, sex characteristics, and gender identity. In this regard, this paper briefly examines the context within which the laws and existing institutional frameworks in El Salvador, Guatemala, and Honduras contribute to the protection or not of violence, including unlawful deaths of persons based on their perceived or actual sexual orientation, sex characteristics, and gender identity.

Methodology and approach

We have chosen to focus our response on three countries, El Salvador Guatemala, and Honduras, three countries with a demonstrable link on SOGIESC and related human rights issues.

NB: ReportOUT uses SOGIESC (Sexual Orientation, Gender Identity, Expression and Sexual Characteristics) within our terminology in this response to refer to sexual and gender minorities. However, in this report, at parts, an indifferent use has been adopted for SOGIESC and LGBTIQ+, LGBTI, and LGBTTTI, thus respecting the different forms of enunciation used by the different organisations in their own countries.

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In El Salvador, discrimination and violence against LGBTIQ+ persons caused repeated violent deaths. Between 2020 and 2024, 20 cases of violent deaths of LGBTIQ+ individuals have been recorded by the organisation Comcavis Trans. Only 6 of these have been prosecuted as murders, one classified as a hate crime, despite Article 129 of the Constitution of the Republic, detailing one aggravating factors of homicide being: "11) When motivated by racial, ethnic, religious, political, gender identity and expression, or sexual orientation hatred" (Gaceta Oficial, 2015).

According to COMCAVIS TRANS, the lack of access to justice and the ineffectiveness of differentiated protocols results in fewer cases being reported. The aforementioned cases are investigated under the legal protocol of forensic medicine and the laws related to murders; however, the registered deaths do not see a timely follow-up. In most cases, the individuals reporting the killings are not relatives of the victims, so they do not file a judicial record of the aggressions, violence, or threats preceding cases of murder with the aggravating factor of hate crime.

The lack of access to justice for LGBTIQ+ individuals and the impunity in cases of violent deaths stem from the lack of sensitisation of public institutions and institutional discrimination based on heteronormativity and ignorance of the need for equity measures and basic understanding of human rights violations and abuses faced by the LGBTIQ+ population daily, most significantly impacting transgender women. Trans women do not have recognition of their gender identity in official documents and thus are often subjected to public scrutiny, mistreatment, and the absence of dignified treatment in community environments and in front of public institutions.

No state institutions responsible for victim support, investigation, and punishment of crimes related to discrimination and violence based on SOGIESC exist since the closure of the Ministry of Social Inclusion (La Prensa Grafica, 2019), which operationalised Decree 56 (Presidencia de El Salvador, 2010) - the prohibition of discrimination based on sexual orientation and gender identity by public administration personnel. This means that LGBTIQ+ individuals seeking support from these institutions may be re-victimised and discriminated against, without legal support to defend their rights. At a structural level, El Salvador lacks an integral and inclusive support system for LGBTIQ+ individuals, with civil society organisations taking on the responsibility of providing these services and making the cases of hate crimes against LGBTIQ+ people visible at national level.

According to Comcavis Trans, there are few legal provisions protecting LGBTIQ+ individuals against existing discrimination due to El Salvador's conservative culture and religious fundamentalism. Initiatives to provide comprehensive healthcare rights for LGBTIQ+ individuals, allow gender changes in official documents and embed non-discrimination laws have been dismissed or repealed at a national level.

Fundamentalist religious groups are responsible for maintaining a binary and positivist discourse that denies the existence of hate motivations towards diverse sexual orientations and gender identities in the commission of crimes; on the other hand, extreme conservative groups oppose the adequate fulfillment of human rights for LGBTIQ+ people in El Salvador, considering it a "gender ideology" that undermines "morality and good customs" in the country.

The actions of these actors do not allow for advances in terms of rights and limit the scope that human rights organisations' sensitisation processes may have at the national level, which creates a culture of impunity in violence taking place against LGBTIQ+ individuals.

In 2024, following Nayib Bukele's participation in the Conservative Political Action Conference (CPAC), the Salvadoran government adopted a more radical and frontal stance against the mainstreaming of gender in education, health, and generally in all government bodies. At the same time, all guidelines seeking to respect and make visible the existence of LGBTQ+ people were discarded (Maldonado, 2024).

In the context of the state of exception, established in March 2022, violence directed towards LGBTQ+ individuals is also observed, such as the detention of 80 LGBTQ+ individuals (La Prensa Grafica, 2023). Likewise, 132 complaints of violence perpetrated by security forces were recorded in the first semester of the state of exception, public servants who deny basic services and the fulfillment of fundamental rights, such as education, decent work, access to health, citizen security, and freedom of movement (Vanguardia El Salvador, 2022).

In Guatemala, official data on crimes motivated by prejudice is almost non-existent. The Public Ministry recorded 10 killings of LGBTIQ+ individuals during the year 2020, while in 2021 there were only 3 killings and 2 cases of serious injuries. For the year 2022, the investigative body recorded 2 cases of killings, and by June 2023, they documented 4 cases, totaling 19 violent deaths of LGBTIQ+ individuals nationwide over the last 4 years. However, these figures, rather than reflecting reality, demonstrate the inefficiency of the public institution in registering, analysing, and making visible homicidal violence against LGBTIQ+ persons.

Given the lack of public data, the observatory of the organisation Lambda, over the past few years, has implemented a methodology to document and record acts of violence against LGBTIQ+ individuals. The quantitative and descriptive data obtained have allowed for a numerical, analytical, and geographical approximation of prejudice-motivated crimes perpetrated in the country. The data presented by the observatory in its reports indicate that from 2020 to June 2023, at least 120 prejudice-motivated crimes against LGBTIQ+ individuals have been perpetrated nationwide (Asociación LAMBDA, 2023). Of these 120 cases, only two convictions have been obtained, resulting in 99% impunity.

According to the organisation Lambda, the absence of legislation and regulatory norms in favor of LGBTIQ+ individuals remains a historical debt in the country. For example, the crime of discrimination, classified in Article 202 of the penal code, still does not include gender identity/expression and sexual orientation as protected categories (Congreso Gobierno Guatemala, 2002). In 2017, there was an attempt through initiative 5278 "Law to sanction crimes motivated by prejudice," however, it received an unfavorable opinion from the legislation and constitutional commission and was archived. Similarly, the Guatemalan penal code does not recognise prejudice-motivated crimes as independent offenses, therefore, there are no legal tools to classify the murder of an LGBTIQ+ person under a criminal type that includes prejudice-based violence.

In 2018 and 2019, trans organisations presented attempted to introduce legislation to include gender identity within civil registrations but have encountered rejection at both a political and judicial level. The absence of such protection means that identities of trans people still lack legal and registry recognition, directly impacting the violence they suffer and the lack of available data on such crimes.

Simultaneous regressive bills against LGBTIQ+ individuals tend to advance further in the legislative process and receive institutional support. Examples include 2022's initiative 5272 "Law for the protection of life and family" was approved as a decree, expressly prohibiting marriage between same-sex individuals and legitimising violence against diversity by labeling non-heterosexual practices as abnormal. Due to social pressure, the decree was archived, but it was very close to having legal effects in the country. In July 2021, a series of conservative deputies presented initiative 5940 "Law to guarantee comprehensive protection of childhood and adolescence against gender identity disorders," which proposes to reform specific decrees such as the Pina law, with the aim of criminalising trans identities in childhood and punishing anyone who helps a trans adolescent in their transition. This initiative already has a favorable opinion from the education commission and is therefore ready to be debated in Congress for approval.

In terms of public policies, there has been a substantial setback. Since 2012, through agreements reached in the thematic hearing on Discrimination based on sexual orientation in Guatemala held within the framework of the 146th regular session of the Inter-American Commission on Human Rights, the state of Guatemala adopted the commitment to implement an LGBTIQ+ public policy focused on five thematic areas: health, education, work, security, and justice.

However, to date, nothing has been finalised due to the lack of political will from governments. In 2021, Alejandro Giammattei's government approved the Public Policy for the Protection of Life and Family Institutional Policy 2021-2033, which only recognizes heterosexual families as protective entities (Gobierno de Guatemala, 2021).

The consequences and obstacles of a justice system like Guatemala's affect the LGBTIQ+ population in a very specific and differentiated way. These obstacles materialize as lack of attention and proper treatment when reporting crimes, discriminatory, negligent, and prejudiced attitudes of law enforcement personnel, stereotypical assumptions manifested in investigations into the motivations of prejudice-motivated crimes, a high risk of questioning the credibility of victims which reduces confidence in the judicial process. (Corte Interamericana de Derechos Humanos 2015).

The few advances made by public institutions in terms of violence and access to justice for the LGBTIQ+ population lie in the adaptation of their internal records in the categories of sexual orientation and gender identity, which allow for generating statistics on how many LGBTIQ+ individuals have requested services or reported allegedly criminal acts. This is important because it not only represents state recognition of the diversity of sexual orientations and gender identities but also generates public data that can explain realities, contexts, and serve as a basis for public policies. However, despite the existence of these variables in public records, it is worth mentioning that they are not found in all government institutions, nor is there a standardisation of categories or a clear understanding of the differences between sexual orientation and gender identity. Similarly, there are no technical investigation protocols that provide differentiated tools to justice operators to process, analyse, and prosecute cases of violence and killings of LGBTIQ+ persons.

Between 2022 and 2023, Honduras registered an average of 279 violent deaths per month, according to information from the Police Statistics Department (SEPOL, 2023). This violence disproportionately affects vulnerable populations, such as the LGBTIQ+ population. In this case, the observatory of violent deaths of the Cattrachas organisation reported 20 murders of LGBTIQ+ individuals in 2020, 29 in 2021, 44 in 2022, 51 in 2023, and 8 violent deaths of LGBTIQ+ individuals so far in 2024.

In Honduras, there are limited legal guarantees for equality and non-discrimination of the LGBTIQ+ population. On one hand, norms that promote discrimination still persist, such as the non-Constitutional recognition of same-sex marriage, or the National Penitentiary System Law prohibits intimate visits for LGBTIQ+ individuals. Regulation also controls blood components prohibits blood donation by LGBTIQ+ individuals, considering their identities as dangerous; the Regulation of the National Registry of Persons of Honduras establishes a series of prohibitions that force trans people to maintain a legal name different from the one that actually identifies them in their family, social, and professional environment. Given so much legislation prohibiting the rights of LGBTIQ+ people and promoting discrimination, numerous legislative initiatives have been worked on by civil society organisations that are pending approval, such as: the Equality and Equity Law, the Gender Identity Law, and the Same-Sex Marriage Recognition Law.

The Regulation of the National Registry of Persons forces trans people to maintain a legal name different from the name they identify with. However, initiatives such as the removal of the sex/gender component from the national identity document by the National Registry of Persons are to be welcomed, constituting the first step in the process of recognizing gender identity administratively.

There are no legal guarantees for equality and non-discrimination of this population. Although the New Penal Code broadens the notion of discrimination based on sexual orientation or gender identity, the reality is that the legal framework of the State of Honduras, starting from its supreme norm such as the Constitution, only recognizes the right to family for "naturally born" men and women.

Additionally, LGBTIQ+ people face barriers to access to justice, such as stereotypes in police stations and courts, which discriminate against them and re-victimise them, often due to lack of knowledge, leading to distrust of the LGBTIQ+ community in the justice system. Additional to this is the limited progress in investigations into violent deaths of LGBTIQ+ individuals, which indicates the need to advance in technical and practical instruments aimed at providing justice operators with guidelines for effective criminal investigation with the aim of serving as a tool to strengthen mechanisms for preventing and investigating violent deaths of LGBTIQ+ persons, punishing those responsible, adequately compensating victims or their families, and thus combating impunity associated with these types of crimes. According to Cattrachas, from the total of 154 cases of violent deaths of LGBTIQ+ persons documented, there have been only 35 cases judicialised, and only six guilty verdicts.

In 2021, the Inter-American Court of Human Rights condemned Honduras for the death of Vicky Hernández, which occurred during the 2009 coup d'état. The sentence included operative points that require prompt compliance, many related to the justice system, such as "to adopt a protocol for investigating and administering justice during criminal proceedings for cases of LGBTI individuals victims of violence." It also ordered "to design and implement a system for collecting data and figures related to cases of violence against LGBTIQ+ individuals," among others. However, despite Honduras having a sentence that obliges the State to make progress in recognising and guaranteeing the rights of LGBTIQ+ individuals, 3 years have passed and there have been no significant advances on the issue.

Recommendations

We recommend the following measures:

- **Creation of policies to prevent violence against LGBTIQ+ people in order to reduce crime rates.**
- **Compliance with the Vicky Hernandez vs Honduras judgment from the Interamerican Court of Human Rights.**
- **To establish information or mechanisms for reporting and registration of violence against LGBTI+ persons that provide disaggregated and differentiated statistics, considering the specificities of SOGIESC, with an intersectional approach, including the standardisation of SOGIESC variables in the official databases of public institutions to generate congruent and correlated statistics.**
- **To develop a specific investigation protocol on homicides, femicides and transfeminicides of LGBTIQI+ persons, which including a differentiated approach to ensure proceedings free of prejudice and discrimination, as well as guaranteeing access to justice for victims their families, consanguineous and/or social.**
- **To design and implement trainings and education programmes for personnel involved in investigations and judicial proceedings to avoid stereotypes related to sexual orientation and gender identity/expression.**
- **Promote with investigating bodies the use of differentiated investigation mechanisms for violence against women in cases of violence against transgender women.**

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ReportOUT
Pride Media Centre
Unit T1, Stonehills
Shields Road, Pelaw
Gateshead. NE10 0HW
United Kingdom

For more information, please visit our website: www.reportout.org
Get in touch by email: Contactus@reportout.org
Registered Charity Number (England and Wales): 1185887

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