



THE COLOMBIAN PARADOX

Human rights report on the
Afro-descendant LGBTI
community in Colombia

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW
CLINICAL
PROGRAM

 **Race & Equality**
Institute on Race, Equality and Human Rights

EXECUTIVE SUMMARY

Legislation without implementation fails to effectively protect the human rights of the Afro-descendant LGBTI community in Colombia, a twice marginalized community. Colombia has the second-largest Afro-descendant population in Latin America. Vis-a-vis other Colombians who do not face double-layered marginalization, the Afro-descendant LGBTI community faces a unique and heightened form of discrimination. Afro-descendant LGBTI persons face discrimination on account of both their racial and/or ethnic identity and on account of their sexual orientation and/or gender identity.

In recent years, Colombia has made an effort to address the situation of both the LGBTI and the Afro-Colombian community. These efforts, however, have fallen short of meaningful change, in part because the endeavors treat the situation of Afro-Colombians and the situation of the LGBTI community as separate from one another, and fail to address the intersectionality between race and/or ethnicity, and sexual orientation and/or gender identity. There is inadequate documentation of the consequences of this failure to address, which has impacted the country's ability to derive solutions for Afro-Colombian LGBTI persons.

The purpose of this report is to bridge the existing research gap between the human rights situation of the LGBTI community and the Afro-Colombian community, by exploring the intersections of race, ethnicity, gender identity, and sexual orientation in Colombia. The report provides an overview of disproportionate rates of violence and discrimination by citizens and law officials against, as well as limitations on the economic, social, and cultural rights of the Afro-descendant LGBTI community in Colombia.

METHODOLOGY

The report is based on research and review of human rights organizations, international bodies, and Colombian government institutions' reports, as well as the relevant laws and court decisions, international instruments, and domestic institutional structure. In addition, in Spring 2019, the authors conducted twenty-three interviews with local and national prosecutors, lesbian and trans activists, and Afro-Colombian LGBTI student activists in Cali and Bogotá, Colombia. In Cali, where there is a high population of Afro-descendant Colombians, the authors met with: student activists and researchers from the University of Valle del Cauca; the governor's office; the LGBTI organization, Somos Identidad; and the Trans foundation, Santamaria. In Bogotá, the authors interviewed the Director of the Institute on Race and Equality in Colombia, and a trans activist and Director of Corporación Opción por el Derecho de Hacer y el Deber de Hacer; and government officials, such as representatives from: the Office of the Attorney General of Colombia; and National Center for Historical Memory.

IDENTIFIED ISSUES

SOCIAL DISCRIMINATION LEADING TO VIOLENCE AND HOMICIDE.

The Afro-Colombian LGBTI community is more likely to experience discrimination and violence than any other sector of the Colombian population. Patterns of discrimination and violence show that this community is targeted for both their racial and/or ethnic identity, and their sexual orientation and/or gender identity. Common patterns include perpetrators harassing Afro-Colombian LGBTI persons with verbal violence, escalating into physical and sexual aggression, and ultimately resulting in fatalities. When subjected to violence, Afro-descendant LGBTI persons face higher levels of cruelty, denigrating racial expressions, and physical mistreatment. They are more predominantly victims of sexual harassment and rape.

LAW ENFORCEMENT VIOLENCE AND DISCRIMINATION.

Law enforcement violence manifests itself in many forms, from prejudice and bias to physical violence. The most common forms of law enforcement violence include systematic beatings, prolonged and unjustified retention of identity documents, and arbitrary detention. The trans community, particularly trans sex workers, are exceptionally susceptible to law enforcement violence and discrimination. Trans women in Colombia have reported law enforcement violence rising to the level of torture, including electric shocks, burns with

unknown substances, wounds to silicone implants, and prolonged beatings accompanied by homophobic and racial slurs. The interviewees report that police commonly use derogatory language, such as: “puta/whore,” “loca/crazy,” and “marica/faggot.” Challenges with addressing law enforcement violence stem from inadequate and insufficient data collection, lack of government transparency, and insufficient independent accountability mechanisms.

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS.

In Colombia, there is a notable education inequality between rural and urban areas. In rural areas, where there is a larger Afro-descendant community, the quality of education is lower. The Afro-Colombian population has the highest level of mortality and the lowest level of education in the country. In addition to challenges in accessing education, due to racial discrimination and poverty, Afro-descendant LGBTI persons additionally face discrimination in schools based on their sexual orientation and/or gender identity. The most common forms of discrimination in schools include homophobic language; verbal and sexual harassment; physical aggression; exclusion from student organizations; rejection from other students; theft, and damage to personal property; cyberbullying; harassment by teachers and school personnel; and exclusion from classrooms for using the uniform that conforms with their preferred instead of assigned or assumed gender identity.



FINDINGS

Colombia is a highly institutionalized nation with comprehensive legislation recognizing LGBTI rights and providing protections for Afro-descendant communities. However, despite well-structured jurisprudence and institutions, significant gaps in enforcement and implementation remain of great concern. Afro-descendant LGBTI persons face homicide at higher rates, committed with apparent brutality. However, according to civil society organizations tracking violence and homicide rates, law enforcement often treats crimes against the community like any other crime, ignoring patterns of particularized violence and practices. Afro-descendant LGBTI communities face additional obstacles in accessing education and employment than the Colombian population overall. They face discrimination in the school admission process, and once admitted, face discrimination, harassment, and other forms of violence within the school system. Finally, failure to collect data regarding the human rights situation facing the Afro-descendant LGBTI community results in an additional challenge in clearly defining public policy and enforcement mechanisms that would satisfy the needs of the Afro-descendant LGBTI community.

RECOMMENDATIONS

TO THE COLOMBIAN GOVERNMENT

IMPROVE ACCESS TO SOCIAL & JUDICIAL SERVICES

Increase training for service providers on LGBTI issues, improve discrimination complaint mechanisms, and broaden efforts to increase the quota system and affirmative action policies.

INCLUDE THE LGBTI COMMUNITY IN DECISION-MAKING

Activists and community members expressed frustration at the difficulties of participating in government stakeholder meetings and engaging with public policy discussions. Furthermore, there is a lack of representation and diversity in government bodies. National and local governments should actively seek to gain input from the Afro-LGBTI community in decision-making and hiring, and ensure that members of the community are represented in governing bodies.

REPLACE CURRENT POLICE & GOVERNMENT ACCOUNTABILITY MECHANISMS

Current Colombian accountability mechanisms lack transparency and independence that can insulate law enforcement perpetrators from prosecution. Mechanisms allowing citizens to file complaints against law enforcement officials should be implemented and an independent monitoring body, entirely separate from law enforcement, should be pursued. Increase Oversight on the Implementation of Laws and Policies: Law and policies are not being effectively followed at the local level. Resistant government officials can block access to rights such as the ability to change one's sex or identity documents. Policy implementation is dependent on follow-through and so oversight efforts should be made so that human rights are not stunted.

COLLABORATIVE & TRANSPARENT DATA COLLECTION EFFORTS

Data collection discrepancies are widespread, particularly between government and civil society organization reports. The government should be transparent about how data is collected and collaborate with nonprofits and activists to improve data markers. Actionable Public Policies: It became apparent when speaking with public officials that policies are frequently aspirational rather than actionable. Policies should articulate tangible and measurable goals to have an impact.

RECOGNITION OF THE INTERSECTION OF RACE & GENDER

The most significant observation through research and interviews was the absence of intersectionality between race and gender and the disconnect and tension between the Afro-descendant and LGBTI communities. Afro-LGBTI individuals shared experiences of hostility from Afro-Colombian groups and racism from LGBTI communities. The government should focus efforts at acknowledging the intersection of identities and the unique Afro-LGBTI experience. Human rights organizations should similarly engage with intersectionality.



RECOMMENDATIONS

TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

IN LOCO VISITS TO COLOMBIA


The current data on the human rights situation of Afro-descendant LGBTI persons in Colombia shows discrepancies between the government and civil society organizations' statistics. In addition, there is a lack of enforcement of already existing laws and public policies. Thus, the IACHR should conduct an in loco visit to Colombia to conduct an accurate in-depth analysis of the human rights situation of the Afro-descendant LGBTI community in Colombia, and follow-up on enforcement of domestic and international laws, public policies, and international bodies' recommendations.

MONITORING HUMAN RIGHTS

IACHR should continue to closely monitor the human rights situation of the Afro-descendant LGBTI community, particularly in the implementation and enforcement of public policies and legislation in Colombia.

EXPLORE THE INTERSECTION OF RACE, ETHNICITY, GENDER IDENTITY & SEXUAL ORIENTATION IN COLOMBIA

The role of the IACHR Rapporteurship is to monitor the situation of human rights with a focus on different communities. The IACHR should ensure that these rapporteurships recognize the intersection between race, ethnicity, gender identity, and sexual orientation in exercising their mandate. More specifically, the *Rapporteurship on the Rights of LGBTI* persons should explore how race and ethnicity adds an additional level of discrimination for members of the LGBTI community; the *Rapporteurship on the Rights of Persons of African descent and against Racial Discrimination* should highlight the human rights situation of persons of african descent who identify as LGBTI; the *Rapporteurships on the Rights of Women* should address the human rights situation of lesbian, bisexual, trans, and intersex women, and how race and ethnicity plays a role in the experiences of these women; and the *Rapporteurship on Economic, Social, Cultural, and Environmental Rights* should explore how the Afro-descendant LGBTI community faces distinct challenges in accessing economic, social, and cultural rights.





RECOMMENDATIONS


TO COLOMBIAN CIVIL SOCIETY ORGANIZATIONS

CONTINUE TO RAISE AWARENESS

Some Afro-descendant LGBTI members have taken the lead in organizing themselves and speaking up about the human rights violations of the Afro-descendant LGBTI community. Civil society organizations should continue these efforts both at the national and international level.

INDEPENDENT DATA COLLECTION EFFORTS

The fieldwork revealed discrepancies between the government statistics and the civil society statistics regarding the Afro-descendant LGBTI community. It is important to continue to document and gather information on all the human rights violations suffered by the Afro-descendant LGBTI community to ensure that the government has the most current and accurate data.





Despite efforts from the Colombian government to improve the rights of the LGBTI community, these efforts are still failing the country's Afro-descendant LGBTI community. Afro-descendant LGBTI persons continue to face higher levels of social discrimination, violence, injustices, and limitations in accessing basic rights. As the report shows, the Afro-descendant LGBTI community suffers from human rights violations that are distinct and unique from those of the Afro-descendant community and the LGBTI community. Nonetheless, efforts to improve their situation fail to focus on the intersection of identities. The results include public policies and jurisprudence, along with the structuralization of institutions, that do not match the Afro-descendant LGBTI community's needs. The Colombian government, civil society organizations, the IACHR, and the international community at large should ensure that the rights of the Afro-descendant LGBTI community are not invisibilized by addressing the unique patterns of discrimination that this community faces.