



**Hate-based Violence and Access to Justice
for Transgender Hondurans**

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In a country like Honduras, where according to the human rights organization Cattrachas, 92% of crimes against the LGBTIQ+ population remain unpunished, ¹to speak of access to justice is to speak of impunity. This is a summary of our recent documentation of several of the factors that contribute to maintaining the rate of impunity for crimes against the LGBTIQ+ population in Honduras at 92%.

When it comes to access to justice for crimes against LGBTIQ+ persons, there are institutional and legal barriers that limit the prosecution of those directly responsible for crime. These barriers are particularly salient in cases in which the victim is a member of the transgender population.

Through the implementation of Cristosal's Access to Justice Project for the Transgender Population in Honduras, several barriers have been identified that impede access to justice. In our work we use the United Nations Program for Development's definition of access to justice, "*the ability for people to seek and obtain a remedy through formal or informal justice institutions, and in accordance with human rights standards for victims or their social and/or biological families*" (PNUD, 2005). These barriers can be divided into three categories. The first two are related to the criminal justice system in Honduras: institutional barriers and investigative/technical issues. The third barrier appears in the context of the victims' families when there is discrimination based on gender identity or sexual orientation².

One of the barriers associated with the *technical and investigative operations of the criminal justice system* is failure to act with due diligence. The principles of due diligence in the investigation of grave human rights violations according to the Center for Justice and International Law (CEJIL) are a) professionalism, b) timeliness, c) competence, d) independence and impartiality, e) completeness, f) participation of victims and their families (CEJIL, 2010). We see the failure to act with due diligence when LGBTIQ+ people report crimes that are not promptly attended to by investigative and prosecutorial officials. Those crimes then pass their statute of limitations and the prosecution is thus barred from moving forward.

Among the cases that Cristosal documented in Honduras since 2020, were reports of lack of due diligence. One such report was made by a participant in the project. She was denied access to just by the investigative bodies and those responsible for criminal prosecution when they simply did not register her report. Legal advisor to the project, Aida Flores explains.

¹ Joint Report Submitted for the Second Round of the Universal Periodic Review of Honduras, Coalition Against Impunity, 2014 <https://derechosdelamujer.org/documentos/informe-conjunto-presentado-para-la-segunda-ronda-del-examen-periodico-universal-a-honduras/>

² Family discrimination based on gender identity or sexual orientation is understood as when the biological or social family discriminates against a person because of his or her gender identity and/or sexual orientation.

As part of the implementation of the project, we began to provide legal support to a transgender woman who was a victim of physical and psychological violence by individuals in her neighborhood because of her sexual orientation and gender identity. The victim went to the Public Prosecutor's Office (MP) to report the violence. She later sought the support and accompaniment of the OSF-Trans project team and when I presented myself as her legal representative before the MP. That was when we realized that the prosecutor on duty had not registered the victim's report of a crime, nor did it even appear in the record of incidents. This is how the State of Honduras leaves the victim unprotected and at the mercy of the aggressors, who remain unpunished for the violence they have committed.

Another barrier that our project team identified as endemic to the institutions and is a barrier to justice is what we refer to as *hate-based violence* within the criminal justice system. For the Inter-American Commission on Human Rights, hate-based violence are prejudice-based crimes that constitute rationalizations or justifications for negative reactions, for example, to expressions of non-normative sexual orientations or gender identities. Such violence is social, local, situated and not part of the idiosyncrasies of the people involved. It must be understood in context and with social complicity (IACHR, 2015). In other words, hate is a construct of the specific social or cultural context and translates to violence when agents of justice make comments such as:

"Most trans women (sex workers) are delinquents, they steal from clients."

- Investigator of the DPI in San Pedro Sula

Furthermore, when accompanying victims to file reports at the Public Prosecutor's Office, the prosecutors on duty have refused to file the report because the victims do not present evidence of the violence they have suffered. This happens even though it is the Public Prosecutor's Office and the investigative agencies who are, in fact, responsible for investigating the evidence to prosecute the persons responsible for the aggressions or violence against transgender people. In this regard, the Inter-American Court of Human Rights (IACHR) points out that "the effective search for the truth corresponds to the State and does not depend on the procedural initiative of the victim or their relatives, or on their contribution of evidentiary elements" (Jimenez Mendencia, G3nzales Ruiz, Buscaglia, Ventura, & Zingerman, 2009).

Another aspect of the criminal justice system that inhibits access to justice in cases of murders of transgender people is the Honduran Code of Criminal Procedure that grants legal representation exclusively to biological family members of the victims. Furthermore, the same Code states that legal representation of the victim cannot be assumed by humanitarian or social organizations. In countries such as Guatemala, ability of humanitarian organizations to assume legal representation has opened up more pathways to justice by allowing LGBTIQ+ human rights associations

to represent the victim ³when there is denial or disinterest on the part of their relatives to seek justice.

It is important to understand the implications of this law by looking at the positions taken by some *biological family members* of LGBTIQ+ murder victims, particularly the transgender population. Positions which often stem from the phenomenon of *family discrimination based on gender identity or sexual orientation*.

This has been one of the main findings identified during the implementation of the OSF-Trans project in Honduras: biological families who are the sole legal representatives for LGBTIQ+ murder victim will often reject the offer of legal assistance. In doing so these biological family members are reducing the possibility of activating the agencies responsible for the investigation and the subsequent prosecution of the victims' cases.

This denial corresponds with the discrimination exercised by these families against their now deceased trans family members, as often the victims' assumed gender identity or sexual orientation goes against the values and beliefs of many of their family members. Legal advisor, Aida Flores tells of one such case,

During one of the interviews I conducted with a relative of a murder victim, he told me that the father (of the victim) did not want to know anything about the case because he never accepted that his son was dressed as a woman and the position that he had taken was that he did not want to know anything about it.

The final institutional barrier directly associated with access to justice for trans murder victims has to do with the Witness Protection Program of the Public Ministry. This program provides few guarantees of protection for potential witnesses. Due to this lack of protection, witnesses are afraid to come forward or provide information. This problem can be further exacerbated by the fact that many potential witnesses may live in gang controlled areas where contact with the criminal justice system can put them at risk.

In summary, in the absence of guarantees to protect the lives of potential witnesses, the investigation and prosecution in fact "limits the conduct of the State in the context of its obligation to find the truth of the facts and punish those responsible in an appropriate manner". (CEJIL, 2010).

³ The Guatemalan State in its Code of Criminal Procedure (Legislative Decree 51-92) Article 116, establishes "(...) The same right may be exercised by any citizen or association of citizens against public officials or employees who have directly violated human rights in the exercise of their duties, or on the occasion thereof, or in the case of crimes committed by public officials who abuse their position".

Conclusions

The lack of oversight, monitoring and social observation of the principle of due process within the criminal justice system, by civil society and victims' families contributes to the lack of access to justice for LGBTIQ+ murder victims.

Lack of statistical data that demonstrates compliance with due diligence principles means that agents of justice are not accountable for their duty to prosecute and punish in court those responsible in cases of hate-based violence and murder of LGBTIQ+ persons.

Hate-based violence (discrimination, bias, prejudice) in the justice system has a direct impact on access to justice, by allowing subjective value judgments of court officials and family members to prevail over their legal mandate to prosecute crime. This allows room for stigma and discrimination to play major roles in the investigation and punishment of those responsible for murders against the LGBTIQ+ population.

The absence of a legal framework that allows human rights organizations to defend the LGBTIQ+ population limits an important pathway to justice for victims. This leaves many victims within the trans community without legal support or a path forward towards justice.

In cases of LGBTIQ+ homicides, particularly those of trans persons, the lack of guarantees or protection measures from the Witness Protection Program stops potential witnesses of LGBTIQ+ homicides from identifying the perpetrators.