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Múltiples

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Derechos LGBT

Superar el estigma y la discriminación basados en la orientación sexual

La opresión por razones de orientación sexual e identidad de género es un tema complicado del discurso de los derechos humanos, caracterizado por enormes diferencias en el reconocimiento de los derechos y la protección. En 76 países sigue siendo ilegal participar en sexo con alguien del mismo sexo (con leyes destinadas en gran medida a los hombres) y en al menos cinco países - Irán, Mauritania, Arabia Saudí, Sudán y Yemen - la pena de muerte prevalece.

Al mismo tiempo, los recientes avances en el sistema de las Naciones Unidas y algunos estados y regiones del mundo han sentado las bases para un creciente debate sobre temas que involucran a personas identificadas como Lesbianas, Gays, Bisexuales y Transexuales (LGBT) en la reivindicación de sus derechos humanos a nivel internacional. En 2011, la Oficina de las Naciones Unidas para el Alto Comisionado de los Derechos Humanos publicó el primer informe de la ONU sobre la discriminación por orientación sexual e identidad de género. Este fue seguido por una discusión en el Consejo de Derechos Humanos de la ONU en marzo de 2012, sobre los derechos globales de los ciudadanos LGBT.

En esta edición de Múltiples, presentamos una diversidad de artículos que destacan las continuas luchas y los avances en los derechos de personas LGBT. La Dra. Khadija Moalla, un ex funcionario sobre VIH con el PNUD en los Estados Árabes, habla de su experiencia de trabajo con líderes religiosos sobre el tema del VIH y los hombres que tienen sexo con hombres (HSH). Marcela Daza, abogada colombiana, describe los avances alcanzados en el ámbito judicial en ese país como resultado de decisiones fundamentales de la Corte Constitucional. Hugo Dann, voluntario del Comité Rainbow Refugee del Canadá, comparte historias de persecución por motivos de orientación sexual y destaca los esfuerzos para promover los derechos de personas LGBT y apoyo a los refugiados LGBT. El Dr. Rubén Mayorga describe la colaboración entre la Federación Argentina de LGBT y la oficina regional de ONUSIDA para promover iniciativas legislativas y de políticas públicas en la Argentina.

LGBT Rights

Overcoming Stigma and Discrimination based on Sexual Orientation

Oppression on the grounds of sexual orientation and gender identity is a complicated area of human rights discourse, marked by vast differences in rights recognition and protection. In 76 countries it remains illegal to engage in same-sex conduct (with laws largely targeted at men) and in at least five countries – Iran, Mauritania, Saudi Arabia, Sudan and Yemen – the death penalty prevails.

At the same time, recent advances in the UN system and some states and regions of the world have set the stage for increasing discussion of Lesbian, Gay, Bisexual and Transgender (LGBT) issues in international human rights. In 2011, the UN Office for the High Commissioner for Human Rights released the UN's first report on discrimination based on sexual orientation and gender identity. This was followed by a discussion at the UN Human Rights Council in March 2012 on the global rights of LGBT citizens.

In this edition of Multiples, we have a wide range of articles that highlight continuing struggles and advances in LGBT rights. Dr. Khadija Moalla, a former UNDP HIV Practice Leader in the Arab States, discusses her experience working with religious leaders on the issue of HIV and Men who have sex with men (MSM). Marcela

Daza, a Colombian lawyer, outlines progress made in the judicial realm in that country as a result of landmark decisions by the Constitutional Court. Hugo Dann, a volunteer with Rainbow Refugees Canada, shares stories of persecution based on sexual orientation and highlights efforts to promote LGBT rights and support LGBT refugees. Dr. Ruben Mayorga describes the collaboration between the Argentine LGBT Federation and the regional UNAIDS office to promote legislative and public policy initiatives in Argentina.

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The International Struggle for the Human Rights of Sexual and Gender Minorities and the Plight of LGBT Refugees

Hugo Dann



The making of a refugee: a story

A young Iranian man meets another young man he thinks might possibly be like himself. They go together to a park and his new friend points to the flowering shrubs and says, "You know, every flower smells different." They kiss. The next thing he knows, they're being violently pulled apart by police. He faints when they seize him. When he comes to, he's naked and in terrible pain. He realizes he's being raped and faints again. When he comes to the second time, hours have passed. Some plainclothes policemen offer to take him home. It's late but his parents are waiting, his mother very worried. He makes excuses and goes to bed. The next evening, his father comes to him and says the police are at the door and want to see him. He goes outside, and one of the policemen shows him a video on a cell phone. It is of himself being raped. "We could arrest you for sodomy," says the cop, "but we're being kind to you. We have some other people who want to meet you." The young man asks, "Can I have a minute to change my clothes?" He goes back inside, grabs some clothes and all the money he can find. He heads to the kitchen. "What's wrong?" his mother asks. "Nothing," he says. "I'm staying the night at a friend's. I love you." He runs out the back door and heads directly to the train station and takes the next train to Ankara, Turkey.

This should be read as a likely scenario, rather than as history. It was adapted from stories found on the website of a refugee organization based in Toronto, the *Iranian Railroad for Queer Refugees (IRQR)*. *Pink News*, Europe's largest online source of LGBT news, reported in May of this year that four men in Iran had been sentenced to death by hanging for the crime of sodomy.

LGBT rights are human rights: a global problem

If one is going to address the global persecution of lesbian, gay, bisexual, and transgender (LGBT) people, one has necessarily to speak of laws and nations, of terms and definitions, of facts and figures. What, almost inevitably, gets lost in such discourse are the intimate, personal realities of individual people. And yet that is exactly what the discussion ought to be about. The Holocaust, the genocides of Rwanda, and the Bosnian war are nearly incomprehensible in the enormity of their undifferentiated human suffering. The same can be said of the effects of homophobia and transphobia (and already we have entered the realm of terms and definitions). The threat presented by the manifestation of these phobias can sometimes be difficult for non-LGBT people to grasp, especially for citizens of a liberal democracy such as Canada, where gay rights seem commonplace.

For millions of us around the world the threats are a real and present danger, faced daily. Through involvement with *Rainbow Refugees Nova Scotia (RRANS)*, I have been privileged to meet and correspond with individuals for whom these phobias have posed a deadly menace. So, while it will be necessary to deal with laws, definitions, and statistics, while writing I will try to keep the lives of individual LGBT human beings as present as possible.

For those concerned with LGBT equality, the last few years have seemed very challenging indeed. The Organization for Refuge, Asylum and Migration (ORAM), is a leading non-governmental advocate for LGBT refugees worldwide. Based in San Francisco, ORAM is the only international organization that focuses exclusively on refugees and asylum seekers fleeing sexual and gender-based violence. Reliable statistics about LGBT refugees don't exist, but ORAM – conservatively – estimates that 175 million LGBT people, on every continent except Antarctica, are currently living in "persecutory" environments.

Approximately 80 countries still criminalize homosexuality. Others use so-called "morality edicts" to deny LGBT people their right to freedom of speech, assembly, privacy, education, and so on; still more simply turn a blind eye to any acts of violence and harassment perpetrated against their

LGBT citizens. Iran, Nigeria's Sharia states, Saudi Arabia, Somalia, Sudan, and Yemen all punish convicted homosexuals with death.

LGBT struggles in Uganda

Uganda captured global attention in 2009 when MP David Bahati introduced a bill in Parliament to drastically increase penalties for lesbians and gay men. Mr. Bahati's proposed changes would have seen jail sentences increased to life imprisonment; repeat offenders could be found guilty of "aggravated homosexuality" and sentenced to death. Mr. Bahati's ties to American evangelicals, including Abiding Truth Ministries, (identified as a hate group by the Southern Poverty Law Center), have been well documented in the media. What became known as the "Kill the Gays Bill" attracted international attention. It was denounced by U.S. Secretary of State Hilary Clinton, and by numerous Commonwealth countries, including Canada.

But anti-gay sentiment in Uganda seemed to intensify. In October 2010, Rolling Stone, an English language tabloid in Kampala, published photographs of 100 suspected LGBT people under the headline, "Uganda's Top Homos," crossed by a yellow ribbon reading, "Hang them!" Activists from Sexual Minorities Uganda, David Kato, Kasha Jacqueline Nabagesera, and Julian Onziema successfully



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sued to stop the paper from publishing. On January 3, 2011, High Court Justice **Kibuuka Musoke** ruled that Rolling Stone had threatened Kato's and the others' "fundamental rights and freedoms," including their constitutional right to privacy.

Barely three weeks after this first legal victory for Uganda's LGBT community, a man assaulted David Kato in his home and beat him with a hammer. He died on the way to hospital. Sidney Nsubuga Enoch was found guilty of Kato's murder, but questions remain in the minds of many as to what really took place and who was involved.

Meanwhile, Bahati's anti-gay legislation was limping its way through Parliament. Alarmed by the international community's negative attention, President Musveni formed a commission to study the implications of passing the law; the Bill was held for discussion. Delaying the vote seemed to work as Parliament adjourned and the Bill died on the order paper. Yet in February 2012, when Parliament resumed, Mr. Bahati reintroduced his legislation and things seemed to get darker. Days later, Uganda's Minister of State for Ethics and Morality, the Hon. Simon Lukodo, paid a most unwelcome call on Kasha Jacqueline Nabagesera.

On February 14 she was in a hotel conference room, leading an empowerment workshop for Freedom and Roam Uganda, (FARUG), a social and activist organization for lesbians, bisexual women, and transgender

Ugandans. An official, claiming to be from President Musveni's office, entered the conference room and asked her to accompany him to where Minister Lukodo was waiting, with the police. The Minister told Ms Nabagesera to take him to the workshop so that he could observe. Once there, he announced that the gathering was illegal and immoral. He ordered its closure and told participants to go home. In the ensuing confusion Ms Nabagesera was able to escape, with the Minister allegedly calling for her arrest.

Once again the eyes of the LGBT world focused on Uganda, but the pace of change had accelerated. Calls for Ms Nabagesera's arrest quietly disappeared. Frank Mugisha and Sexual Minorities Uganda launched a suit against an American evangelist in a Massachusetts court, accusing him of inciting violence against Uganda's LGBT community. Mr. Mugisha and Ms Nabagesera have both received prestigious, international human rights awards. President Musveni, running counter to the usual anti-gay rhetoric that homosexuality is un-African, has made public statements acknowledging that there have always been homosexual people in Uganda and that Ugandans have accepted them (laws against homosexuality in Africa are one of the tragic legacies of European colonization). Finally, this May, Uganda opened its first health clinic specifically for the LGBT community, a historic milestone. True, Mr. Bahati's bill is still before Parliament, but a documentary film about David Kato, "Call Me Kuchu," is raising awareness globally. It recently won the Best Film award at Toronto's Hot Docs Festival. Even more hopefully, polls in Uganda are showing that the increased debate is shifting public opinion and the percentage of Ugandans who oppose LGBT equality is decreasing.

LGBT Refugees in Canada

For LGBT refugees, the road to safety is long and complicated. It is likely that Canada accepts fewer than 100 LGBT refugees per year. Let's consider our Iranian friend, after he manages to arrive in Ankara. Homosexuality is

legal in Turkey, but there are no anti-discrimination policies. Progress is being made as Turkey strives to enter the European Union, but the country remains socially conservative. Our friend may find it hard to secure housing or a job, and may legitimately fear violence. It is unlikely that he will choose to resettle in Turkey; this will be his country of transit. Let's imagine Canada is his country of destination. His first step must be to apply for refugee status from the office of the United Nations High Commission for Refugees (UNHCR). The UNHCR recognizes LGBT people as refugees, as does Canada. Now he goes on a waiting list. If he's lucky, his name comes to the attention of a group that arranges for private sponsorship of refugees, which means that the sponsoring group assumes financial and settlement responsibility for their applicant for one year. The group applies to bring our Iranian friend to Canada. He must then go to the Canadian Embassy in Ankara and again apply for refugee status. All applications must be verified and approved both locally and in Canada. At this point, lesbian and gay refugees are often challenged by immigration officials to somehow "prove" that they are gay. The bureaucratic process of hearings, judgments, and appeals can drag on for years.

In light of the discouraging numbers, the endless, entangling red tape, the years of waiting in a semi-stateless limbo, it is a wonder that any refugee perseveres in their quest for freedom. It is almost as wonderful that people who work with refugees, facing the same bureaucratic suspicion, continue to offer legal, financial, and emotional support.

Some refugees, able to pay for travel, legal and otherwise, risk all on one throw. They make it directly to their country of destination and claim asylum at the border. Such claimants are the least welcomed by governments, which put up as many barriers against them as they can. Canada is considering mandatory detention for up to a year for asylum claimants. The risks are high. Failure means deportation, which, for some, can mean death.

Some stories have happy endings

After years of beatings and death threats from his father because he's gay, fourteen-year old Alvaro Orozco fled his home in Nicaragua. He made an extraordinary journey, lasting more than a year, crossing many borders through Central America and the United States, until he arrived in Toronto. Once there, he claimed asylum on the basis of sexual orientation. His first hearing before the Immigration and Refugee Board (IRB) took place by videoconference, before an IRB adjudicator in Calgary. The adjudicator didn't believe Alvaro was "really gay." His claim was denied. He appealed; the case dragged on for years. Meanwhile, he built a life in Toronto, even winning an award from the city for his work with at-risk youth; but always with the threat of deportation hanging over him. After years of waiting, suddenly everything seemed to fail. With no warning, Alvaro was picked up by police at a Toronto subway stop. He was held in a detention centre; his deportation seemed imminent. But the LGBT community mobilized around Alvaro. We held rallies, wrote letters, and created groups on Facebook. It worked. Alvaro Orozco was allowed to stay on compassionate and humanitarian grounds.



About the Author

Hugo Dann has been a professional actor for 35 years and an activist for LGBT equality nearly as long. He has been involved with numerous LGBT organizations in Halifax, Nova Scotia, including Halifax Pride, and the Nova Scotia Rainbow Action Project. He is a co-founder of the Rainbow Refugees Association of Nova Scotia. He proudly identifies as queer.

Situación de la población LGBT en Guatemala

Nuestra consultora asociada, Outi Kristina Karppinen, entrevistó a representantes del movimiento LGBT en Guatemala, a continuación presentamos un resumen de la información recabada. Agradecemos a Sergio Vásquez de Organización para la Búsqueda de Respuestas Enfocadas a la Problemática del VIH o Sida (OMBRES); a Thelma Sánchez del Colectivo de Amigos contra el Sida (CAS); y a Herbert Hernández y su equipo en la Asociación LAMBDA.

"La discriminación empieza en casa"

Guatemala, como la mayoría de los países centroamericanos, no cuenta con leyes de protección para la población lesbica, gay, bisexual y transgénero (LGBT). La discriminación en todos los ámbitos de la vida cotidiana es constante y la violencia es común, especialmente contra la población transgénero, 8 personas fueron asesinadas y una desaparecida en 2011. Por varios años el movimiento LGBT, que inició sus actividades en la década de los años noventa, estuvo representado por una sola organización no gubernamental, OASIS. Gracias al financiamiento del Fondo Global de Lucha contra el Sida, la Tuberculosis y la Malaria, los últimos años han marcado un aumento importante en la cantidad de organizaciones no gubernamentales que atienden a población LGBT en el marco de VIH. En 2010, surge la Asociación LAMBDA que busca la igualdad y la dignidad a partir del ejercicio pleno de los derechos humanos.

El camino a correr, sin embargo, es aún largo en un país religioso, conservador y homofóbico donde sólo el 55% de la población cree que los homosexuales tienen los mismos derechos que el resto de la población y donde sólo 2 de cada 5 personas aceptaría un familiar homosexual (encuesta CID/GALLUP 2009).

"En Guatemala, es más fácil salir del closet como VIH+ que como gay"

La sexualidad es un tabú en la sociedad guatemalteca y la diversidad sexual como un tema de derechos humanos es invisible. El machismo juega un papel importante en el rechazo a la diversidad sexual que es tratada con burla y desprecio. Los testimonios dan cuenta que la discriminación y la exclusión de personas de diversidad sexual se inicia en el hogar. Los jóvenes que se identifican a sí mismos como LGBT en su adolescencia, corren el riesgo de ser encerrados en sus casas, de que sus documentos de identidad sean confiscados y que el permiso para salir de sus casas les sea denegado. En ocasiones, los padres de familia toman represalias y les niegan el derecho a la alimentación, la salud y la educación. En el ámbito escolar sufren acoso y discriminación por su orientación sexual. Existen incluso reportes de escuelas estatales que han intentado incluir en sus estatutos la negación de inscripción de personas LGBT. En el ámbito de la salud pública, las personas LGBT no reciben atención adecuada integral ya que no existen protocolos específicos para su atención. Incluso hay reportes de personal de salud pública en clínicas de VIH que prestan un servicio discriminatorio y poco digno a estas personas. En cuanto al ámbito laboral, existen testimonios de negación de contratación y despidos indirectos por causas de orientación sexual. Las personas transgénero sufren una persecución especial en el país. Según una denuncia de LAMBDA, de acuerdo a reportes policiales entre 1996 y 2006 fueron asesinadas 60 personas transexuales, la mayoría de ellas con un tiro de gracia o con arma blanca, clara manifestación de crímenes de odio.

A pesar de los testimonios, no existen registros sistematizados de abusos por orientación sexual ni un sistema de protección jurídica contra violaciones de derechos humanos fundamentales de personas LGBT. El número de registros disponible es claramente mínimo y representa un subregistro.

“No hay cultura de denuncia”

Las leyes existentes en el país contra la discriminación no especifican protección por orientación sexual. En la Procuraduría de los Derechos Humanos no existe una Defensoría de Diversidad Sexual. En el Ministerio Público resulta difícil registrar denuncias de agresión o violaciones de derechos por orientación sexual debido a que esta entidad no cuenta con sistemas de registro adecuados para registrar la denuncia como tal. Además, funcionarios de la Policía Nacional Civil han sido sindicados en casos de violencia contra personas transgénero y LAMBDA ha denunciado discriminación y agresión por parte de los propios agentes de la seguridad pública. Ante este vacío legal la población LGBT se encuentra desamparada y desprotegida. Debido a la fuerte discriminación y rechazo social hacia la diversidad sexual, denunciar agresión, acoso o violación de derechos representa un alto costo social para el denunciante, quien en la mayoría de los casos opta por no arriesgarse a sufrir una mayor marginación social, laboral y personal.

“Habría que dejar un poco de lado los condones y lubricantes y empezar a trabajar en lo esencial”

Desde hace algunos años -gracias al financiamiento del Fondo Mundial de lucha contra el SIDA, la tuberculosis y la malaria y otros donantes como HIVOS- las organizaciones LGBT están promoviendo acciones en beneficio de la comunidad LGBT, principalmente en el marco de la prevención del VIH. En algunos lugares del país trabajan con grupos de jóvenes apoyando su organización, desarrollo de liderazgo positivo y coordinación entre sí, buscando visibilizar el tema de diversidad sexual y promover una mayor aceptación social de la población LGBT. También se da apoyo a las familias con la intención de empezar a cambiar la sociedad desde el hogar y se realizan acciones de incidencia en otros ámbitos como en el sector educativo y religioso, por ejemplo con la iglesia adventista. Consecuentemente, el movimiento LGBT organizado está empezando a crecer en el país. La percepción de no tener derechos está cambiando y hay indicios de una nueva generación de personas jóvenes LGBT más conscientes de sus derechos.

En regiones del país con población mayoritaria de la etnia maya, los temas relacionados a la diversidad sexual son aún más difíciles de abordar. El estigma de ser gay es mayor que ser un *marero* (supuesto delincuente juvenil) y existe un mayor riesgo a la integridad física. Las personas atendidas en el interior del país en su mayoría son de escasos recursos y su situación económica reduce su

capacidad de participación en espacios de coordinación. El financiamiento limitado es un fuerte obstáculo para el trabajo con las bases y una gran parte de la labor de concientización se realiza en el marco de acciones de prevención del VIH.

Sin embargo, hace falta un trabajo más enfocado en la promoción de los derechos humanos de la población LGBT, incluyendo esfuerzos para modificar el marco jurídico de protección en el país.

“Guatemala aún está en pañales en cuanto a la protección de los derechos humanos de personas LGBT”

La Asociación LAMBDA ha tomado el liderazgo en propiciar una modificación de las leyes, buscando una protección jurídica contra la discriminación por orientación sexual. Diez organizaciones participan en el proceso de consulta para identificar el canal adecuado para promover un cambio en las leyes que resulte en la protección efectiva de la población LGBT. De las instancias estatales, sólo la oficina del Procurador de los Derechos Humanos participa en este esfuerzo. Para fundamentar el planteamiento, LAMBDA está en proceso de sistematizar la información disponible sobre violaciones de derechos humanos por orientación sexual. Guatemala ha recibido recomendaciones de instancias internacionales de derechos humanos para tomar medidas y poner fin a la impunidad de las violaciones contra personas por orientación sexual o identidad de género, mediante programas de educación y concientización de las fuerzas de seguridad y de autoridades judiciales, sin que el Estado haya tomado cartas en el asunto. Conjuntamente con la propuesta de cambio o modificación de leyes, LAMBDA plantea trabajar en sensibilización de operadores de justicia y agentes de seguridad para empezar a generar un ambiente de mayor respeto a los derechos de las personas de diversidad sexual.

Recientemente, la organización transgénero Reinas de Noche realizó una marcha para conmemorar el Día Internacional contra la Homo, Lesbo, Transfobia y presentó una iniciativa de ley para legalizar el cambio de sexo. La Marcha del Orgullo Gay se realiza en el país desde el año 2000, con un número de participantes en continuo aumento. Sin embargo, no todos se identifican con la marcha, otros optan por no participar para no salir del closet. Por otra parte, se percibe malestar por la falta de interés y participación en favor de la población LGBT de personas LGBT influyentes en la política nacional, con dinero, educación y poder, quienes pudieran aportar mucho para mejorar la situación de los derechos humanos del colectivo al que pertenecen.

El movimiento LGBT en Guatemala está evolucionando con un nuevo liderazgo joven y preparado. La capacidad para la incidencia política efectiva y la habilidad de crear alianzas estratégicas necesarias definirán el éxito de las propuestas de ley y de los esfuerzos por acabar con la condena social que veladamente criminaliza la diversidad sexual en el país. 

Encouraging Religious Leaders' Support for LGBT Rights in the Arab Region

Dr. Khadija T. Moalla

An approach that worked: building trust with religious leaders

Our experience with LGBT rights has not been simply theoretical or academic. We came to this issue through practical experience in dealing with the very real danger of the spread of HIV among the population of MSM (men having sex with men) - a population which, in the Arab region, is hidden and heavily stigmatized. MSM populations exist everywhere and the Arab region is no exception. But in all of the twenty Arab countries where we serve, the MSM populations are stigmatized to the extent that most governments are not yet ready to recognize their existence, and are reluctant to organize outreach or HIV prevention work among them. This constitutes both a public health hazard and a grave human rights violation.

In 2004, the UNDP HIV Regional Programme began to work with Arab religious leaders to reflect on and deal with issues relating to HIV prevention and LGBT rights. We believe that the great success enjoyed by this initiative can be credited to the ways in which we approached the issues and the ways we worked together.

In the Arab region, even talking about HIV has been a taboo. Throughout five years, our HIV team worked patiently to build the trust needed to be able to talk about MSM with religious leaders. To make sure that these leaders would feel they could express themselves freely, the team avoided having media present during sensitive deliberations. We also made sure that people from within the Arab region had a chance to talk without "western outsiders" present. This was particularly important, given that many in the Arab region feel strongly that "people from the West want

to impose their culture on us" - an attitude that cannot be ignored when addressing sensitive issues.

One of the aims of our initiative was to address the stigmatization experienced by those living with HIV and by LGBT populations. *Stigmatization* is a social process of devaluing a person or group because of a characteristic that they appear to have that is deemed to be shameful or dishonourable. In order to alleviate stigmatization we need to change the way we see each other and be more accepting of differences. *Discrimination* is the practice of unfair treatment of a person or group based on prejudice about their ethnicity, gender, disability, sexual orientation, age, political views or another personal characteristic. Eliminating discrimination will involve abolishing discriminatory laws and enacting protecting laws, and for this we need to work with parliamentarians. But our programme viewed the elimination of stigmatization as an essential first step before laws and policies will change.

The imams and priests were more receptive to dealing with the issue of homosexuality when it was presented in the context of HIV prevention, framing it as a public health issue and a way of protecting those we care about. Similarly, we found it helpful to approach the issue of LGBT rights through the notion of privacy. In both Christianity and Islam the right to privacy is respected. Thus, it was argued that the lifestyle practised by two adults in a private sphere is their personal life and that should be respected.

Our methodology: getting Imams and gay activists together in one room!

Our methodology for working with the religious leaders did not involve disseminating information indirectly through brochures and such materials, but rather promoting interpersonal dialogue, bringing people face to face to share their stories in order to help build empathy with others. Our team developed a number of exercises to facilitate what we call empathetic exploration. In our workshops, Christians and Muslims participated side by side; we did not distinguish Shi'a from Sunni, or Orthodox from Catholics or Protestants. Women and men sat together. We brought together people from Northern Sudan and Southern Sudan. We had people from three different Somali parliaments in the same room with representatives from 18 Lebanese denominations.

Arguments over whose "holy text" is superior do not lead to productive change. However, when we gather leaders from different religious backgrounds around a universally shared challenge, something important can happen. When the process was completed, they thanked us for making them eat together, pray together, and finally speak to each other. If we ever want peace in the region, we think it is important to use this kind of dialogue as a peace-building tool.

One of the moments in this work that stands out for us occurred at the end

of a series of five regional workshops on HIV and Sexual Minorities (sponsored by the Ford Foundation). Gay activists, HIV experts, psychologists, psychiatrists, and religious leaders were all together. It was a Friday and, at the end of the workshops, they all prayed together. For the gay activists, being accepted by their religious leaders and being able to pray with them was especially meaningful. In fact, praying together was more significant to them than recognition by nonprofit organizations or western forces or by anyone else in the world.

We were not aiming to change the Koran or rewrite the Bible. We simply wanted to find common ground where we can live together harmoniously and where everyone is free to think and act with self-



About the Author

Dr. Khadija Moalla is a Tunisian international law, gender and human rights expert, with a notable record in academia and civil society. As UNDP HIV Practice Leader in the Arab States from 2003 to 2011, she coordinated initiatives with religious leaders, legislators, media and NGO leaders that catalyzed the enactment of progressive laws, nationwide training, and top level policy change in many Arab countries. She is a recognised Transformational Leadership Development expert, much in demand as a speaker in many countries, and the author of a number of books and papers. She was recently chosen as one of the 500 most influential Arab personalities.

respect and respect for others. By not condemning anyone else's religion or sexuality, we worked to accept others and listen to what they had to say.

It has been suggested that authority figures who use their power to condemn others may be acting in ways similar to those who abuse drugs, and such an abuse of power may be approached and managed like an "addiction". Several psychologists and psychiatrists who were involved in our religious leaders' project had experience using methods from the twelve-step program used by such organizations as Alcoholics Anonymous. They used similar methods in process groups with the religious leaders, thereby encouraging these leaders to share very profound personal experiences, biases, and struggles. We sat in a circle and shared our feelings, speaking simply as individuals, something that religious leaders are not accustomed to doing. Those who shared something very personal could ask for feedback or not. Those who responded did so by sharing their own experiences. We did not give advice, did not preach, did not react, asked no questions, and this worked.

From dispelling stigma to taking action

The religious leaders who participated in our programme may still believe that sexual practices outside marriage, including homosexual practices, are sinful. We did not and do not intend to challenge this. However, the issue is now addressed as a privacy issue. Just as they respect personal prayers, they agree to respect individuals' privacy. In addition, they will resist all efforts to insult, stigmatize or discriminate against sexual minorities and they will recognize this as a human rights issue. Furthermore, religious leaders agreed to support HIV prevention initiatives, including condom distribution. In the Arab region this is a great stride forward.

It was a significant achievement to have religious leaders, gay activists,

human rights activists, psychologists, and sociologists from different countries and different religions together to determine a course of action and agree to move together on the issues of HIV prevention and discrimination against sexual minorities. Together, the participants presented ten recommendations for actions that can be taken to help alleviate the stigma associated with HIV and allow people to become educated about their own lifestyle and behaviours. And they suggested ways to support further research and take action to stop violence against LGBT populations.

As a result of our work, thousands of imams and priests have been challenging the stigma attached to MSM populations; they have been embracing people living with HIV, and they have provided psycho-social, spiritual, and even financial support to those populations. Many of them have begun outreach work with populations most at risk for HIV, with a particular interest in intravenous drug users, who are less stigmatized than MSM. In 2008, the Multi-faith HIV Network of Religious Leaders ([CHAHAMA](#)), which we helped establish, decided to move ahead proactively to work with MSM populations.

The beauty of our work is that people take a personal stand. Sustainability of action to advocate health and privacy rights of LGBT populations does not come from the funding or from the multi- or bi-lateral agencies, but from the passion people have to address these issues.

What we achieved on the HIV and LGBT front is a step that is vital not only from a public health perspective, but one that goes beyond the rights of certain populations and indirectly contributes to the process taking place now in the Arab region - a process of looking each other in the eye and accepting each other while recognizing our differences. 

Avances en la consolidación de los derechos plenos de las parejas conformadas por personas del mismo sexo en Colombia

Julie Marcela Daza Rojas, Abogada colombiana

Desde el año 2007 y hasta el presente, se han dado importantes avances en cuanto al reconocimiento de los derechos de las parejas conformadas por personas del mismo sexo, tanto en el ámbito jurídico, como en el mediático y el político. Socioculturalmente dichos avances han redundado en transformaciones necesarias para eliminar la discriminación histórica de la que vienen siendo víctimas las personas lésbicas, gay, bisexuales y transgénero (LGBT) en Colombia.

Jurisprudencia Colombiana y derechos de la población LGBT

Los avances jurídicos se han reflejado en el desarrollo jurisprudencial que ha realizado la Corte Constitucional durante los últimos años. El primero de ellos es la Sentencia C-075 de 2007, que reconoce la unión marital de hecho entre parejas heterosexuales, entendida como "*la convivencia entre dos personas que no se encuentran casadas entre sí*". Desde entonces comenzó a gestarse el camino hacia el reconocimiento jurídico de los derechos de la población LGBT. En principio hay que recordar que en esta sentencia la Corte Constitucional precisó que el régimen de protección al que se hacía referencia era el patrimonial generado de la convivencia de dichas parejas. En aquella ocasión la institución manifestó que "*la ausencia de protección en el ámbito patrimonial para la pareja homosexual resulta lesiva de la dignidad de la persona humana, es contraria al derecho al libre desarrollo de la personalidad y comporta una forma de discriminación proscrita por la Constitución*".

Desde el punto de vista jurídico, el reconocimiento no fue pleno dado que no puede entenderse a las parejas conformadas por personas del mismo sexo como una familia, aún cuando los movimientos válidamente así lo exijan y las dinámicas sociales lo demuestren. A pesar de las múltiples opiniones encontradas al respecto, considero que las parejas del mismo sexo son una verdadera familia, con dinámicas propias y con asignación de roles basados en la igualdad, pese a que no sea considerado de tal forma por la Corte Constitucional en la famosa Sentencia C-075 de 2007, en la que además asigna a otra jurisdicción –la ordinaria, específicamente a los jueces de familia–, el trámite de este conflicto.

Para efectos de este breve texto, es importante aclarar que dentro de la estructura de la rama judicial el máximo Tribunal de la jurisdicción ordinaria es la Corte Suprema de Justicia. Será en esta instancia donde se resolverán como último recurso los conflictos que se susciten entre parejas del mismo sexo. Esta Corte ha establecido que son elementos de la esencia de la unión marital de hecho, la cohabitación y la permanencia. Para este Tribunal, dicha unión tiene dos tipos de elementos: uno *objetivo* y otro *subjetivo*. En lo que tiene que ver con el elemento subjetivo, este está dirigido al fúero interno de los convivientes, es decir, el compartir el lecho y la mesa, lo cual implica un proyecto de vida en común y conformar una familia en el marco de las relaciones de familia a las que se refiere la Constitución Política en su artículo 42. Así mismo, en cuanto al elemento objetivo, la unión por lo menos debe ser permanente para que pueda dar lugar a los efectos sustanciales que exige la ley civil, entre ellos, la Sociedad Patrimonial de hecho y para que ésta se presuma como tal en la medida en que exista durante dos años, la Ley 54 de 1990 establece que es indispensable: (I) Que exista unión marital por un término de dos años y libertad de los compañeros permanentes para contraer matrimonio; (II) Que de existir el impedimento matrimonial en cualquiera de los compañeros, de un vínculo matrimonial anterior, las sociedades conyugales se hayan disuelto, liquidado, con un año de anterioridad a la iniciación de los dos años de unión marital a que se refiere el numeral primero de esta disposición. (Los anteriores elementos fueron desarrollados por la Corte Suprema de Justicia, Sala de Casación Civil, en los expedientes: 6117 del año 2000, 6721 de 2001 y 85001 de 2009).

En este sentido para pretender derivar derechos de una unión marital de hecho, conforme a lo establecido en la Ley 54 de 1990, no basta simplemente con que se dé la convivencia. Es por ello que los discursos no deben ser tan laxos para no desinformar a las parejas homosexuales y generar expectativas que el derecho no puede garantizar.

Retomando el tema que nos convoca, en la consolidación de derechos en el año 2009 se dio un paso más, ya que con la Sentencia C-029, se declaró la constitucionalidad de todas las normas que hasta ese momento hacían referencia a las uniones maritales de hecho para que a partir de esta fecha se entendiera que estas normas también deberían ser aplicadas, en igualdad

de condiciones, a las parejas integradas por personas del mismo sexo.

En el año 2011, nuevamente hizo presencia en el panorama la Corte Constitucional, con múltiples decisiones, entre ellas la Sentencia C-577, (de la cual sólo se ha publicado su comunicado de prensa y cuyo magistrado ponente es Gabriel Eduardo Mendoza Martelo), en la que se instó al Congreso para que antes del 20 de junio de 2013 “legisle, de manera sistemática y organizada, sobre los derechos de las parejas del mismo sexo con la finalidad de eliminar el déficit de protección que, según los términos de esta sentencia, afecta a las mencionadas parejas”. Esto en virtud de un estudio de exequibilidad del artículo 113 de la Constitución Política que regula el matrimonio heterosexual. Además de ello, estableció este tribunal que “Si el 20 de junio de 2013 el Congreso de la República no ha expedido la legislación correspondiente, las parejas del mismo sexo podrán acudir ante notario o juez competente a formalizar y solemnizar su vínculo contractual”. De ella se entiende que si el Congreso no legisla, el contrato de matrimonio también lo podrán realizar personas del mismo sexo.

También se falló a favor de una persona homosexual en cuanto al reconocimiento de la pensión de sobreviviente de su compañero por medio de la Sentencia T-860 de 2011, en la que se ordenó al Instituto de los Seguros Sociales, que se iniciara el trámite correspondiente a efectos de lograr dicho reconocimiento y se solicitó a quien alegaba el derecho que debía probar que se habían dado todos los elementos de una unión marital de hecho, tal y como los enunciados en la primera parte del texto, dice la tutela: “el miembro supérstite de la pareja homosexual goza de todos los medios probatorios admitidos para las uniones maritales de hecho heterosexuales, a efectos de acreditar la existencia de una relación permanente de pareja con el fin de acceder a la pensión de sobrevivientes”.

El 24 de mayo de este año, mediante Sentencia T-276, (de la cual sólo ha sido publicado el comunicado de prensa) se estableció que no existe una razón justificada para que el Instituto Colombiano de Bienestar Familiar (ICBF) separara a un hombre soltero homosexual -el periodista estadounidense Charles Ellis Burr- de sus hijos adoptivos por la supuesta vulneración de derechos de los niños en razón de la orientación sexual del padre, frente a quien ya se había terminado el proceso de adopción. En este proceso y textualmente, el comunicado de prensa establece “La Corte ordenó la devolución inmediata de los niños y la terminación del proceso de restablecimiento, después de declarar que existió una vía de hecho administrativa en la actuación del ICBF; por dos razones principales: no existía ningún fundamento para la apertura del proceso, y en caso de que hubiera existido, la medida de ubicación en hogar sustituto en todo caso era desproporcionada (muy drástica). En este orden, la sentencia tutela los derechos al **debido proceso** y los derechos de los niños a ser oídos y a la unidad familiar.” (Subrayado incluido en el comunicado de prensa)

A pesar del avance que implica esta sentencia en cuanto a la posibilidad de adoptar por parte de personas homosexuales que no tienen pareja, sin que sea un obstáculo su orientación sexual, todavía siguen sin resolverse casos de mujeres lesbianas nacionales y extranjeras que han realizado la misma solicitud ante dicha entidad.

Derechos de la población LGBTI en la cotidianidad

Además de estos avances normativos, se han generado avances en relación a la incidencia política en las agendas públicas y los medios de comunicación. Esta incidencia se ha traducido en el posicionamiento junto con la responsabilidad que han asumido las entidades públicas y los medios de comunicación en el tratamiento de los asuntos relacionados con las personas LGBT. Las decisiones han sido de gran importancia mediática para el reconocimiento de derechos de las personas con una orientación sexual diversa, así como para la difusión de información, denuncia y sensibilización de la sociedad colombiana frente al tema. Así mismo, las altas Cortes se han manifestado jurídicamente en pro de los derechos de las personas LGBT.

Sin embargo, no puede desconocerse el verdadero alcance de las disposiciones jurídicas ni descontextualizarlas, dado que las sentencias mencionadas aún no reconocen a las parejas del mismo sexo como una familia, no se pronuncian acerca del reconocimiento pleno de sus derechos y menos aún acerca de la posibilidad de que estas parejas puedan adoptar.

Los avances normativos necesitan ir de la mano de cambios culturales que no pueden darse solamente a través del activismo judicial. Es necesario fortalecer las estructuras sociales mediante la transformación de las normas tanto jurídicas como sociales que discriminan y excluyen históricamente a la población LGBT. Ello implica la transformación de los imaginarios que conciben este tipo de relaciones como antinaturales, ya con esto se podría contribuir a la construcción de una Colombia democrática y pluralista, basada en el respeto a los derechos fundamentales de todas y todos sus habitantes, sin que importen condicionamientos como el sexo, etnia, religión, entre otros.

En este sentido, los movimientos sociales cobran especial importancia ya que es por su intermediación que se han venido realizando acciones que contribuyen en la transformación de aquellas normas y prácticas sociales antidemocráticas y retardatarias que consideran a la población LBGT como un grupo de anormales, enfermos y desadaptados sociales. En Colombia desde hace algunas décadas el movimiento LGBT no sólo ha salido a las calles a manifestarse, también ha generado espacios de reflexión en ámbitos públicos como la escuela y ha difundido conocimiento alrededor de investigaciones sobre la temática.

Los movimientos sociales LGBT se han preocupado por fortalecer su discurso y han avanzado en que -a nivel global y en especial en América Latina- se tome

conciencia de la necesidad de transformar la institución de la heterosexualidad obligatoria. En particular, el Movimiento Lésbico – Feminista ha establecido que “*uno de los retos de las feministas lesbianas sigue siendo exponer las consecuencias de “negociar” la visibilidad y las demandas de las feministas lesbianas para el futuro del movimiento en su conjunto y para la construcción del derecho a todas las mujeres a la autodeterminación sexual*” (En: Historia sobre la presencia pública de las feministas lesbianas, Claudia Hinojosa).

Conclusiones

Entonces, aunque existen avances normativos importantes, es importante generar transformaciones socioculturales profundas que reconozcan política, social y jurídicamente los derechos para las parejas LGBT. Debe buscarse la creación de una regulación autónoma, equilibrada, enfocada en la realidad y en las dinámicas propias de las relaciones entre parejas del mismo sexo, en especial que distinga entre las conformadas por lesbianas, gays, bisexuales y transgeneristas o intersexuales, tal como se propone hoy día.

El Estado debe cumplir plenamente con las disposiciones de los tribunales, y junto con la sociedad, llevar a cabo las transformaciones estructurales que son necesarias para construir un país diverso, de derechos y en paz. Por su parte, el movimiento LGBT, además de persistir en la aplicación a parejas del mismo sexo las normas creadas para parejas heterosexuales, debe ampliar su visión y avanzar en normas que den cuenta de las dinámicas propias de las personas y parejas con una orientación sexual diferente. Por ahora el activismo judicial ha generado avances importantes en el reconocimiento de sus derechos por vía de interpretación de las normas a la luz constitucional, pero estos esfuerzos jurídico políticos deben traducirse en los cambios socioculturales que requiere nuestro país.

Public policy proposals for the social inclusion of lesbians, gays, bisexuals and transsexuals in Argentina

Rubén Mayorga

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Argentina has seen important legislative advances in the past two years, guaranteeing equal rights for lesbians, gays, bisexuals and transsexuals (LGBT). In July 2010, the Egalitarian Marriage Law was approved, permitting same sex couples to marry and enjoy the same rights as heterosexual couples. On 9 May 2012, the Gender Identity Law was also approved, permitting transsexual men and women to change their birth name through a simple administrative procedure at the Civil Registry.

The UNAIDS office in Argentina has made it a priority to partner with organizations of people living with HIV, populations of those most affected by HIV (gay and bisexual men, transsexual women, sex workers, drug users), and with relevant ministries to promote legislation and policies that protect these populations. UNAIDS and UNDP partnered with the Argentine Federation of Lesbians, Gays, Bisexuals and Trans (FALGBT), shortly before the approval of the legislation guaranteeing egalitarian marriage in 2010.

We collaborated to produce a document containing public policy proposals based on the collective reflections of several LGBT groups. The document's motto, *from legal equality to real equality*, reflects the principles of equity, human rights, mutual responsibility, integrity, autonomy, coordination, diversity and participation. (The document can be viewed in Spanish at <http://www.ciudadanialgbt.org/>)

Proposals include the establishment of a national secretariat to guide the government's actions to protect, promote and guarantee rights of the LGBT community through special measures in the areas of labor, health, education, housing, culture, communications, civic participation, and security and violence prevention. The specific measures proposed would help to establish non-discriminatory practices, implement training programs, support vulnerable populations, promote positive role models, and educate and sensitize those who work with the LGBT populations.

Proposed laws include: the above-mentioned Gender Identity Law; the Law for the Comprehensive Health of Trans persons; the Criminalization of Discrimination against LGBT; the Lay Education Law; and the Law of Equal Opportunities and Treatment for LGBT. Special measures proposed for national, provincial, and municipal legislation include subsidies for trans and LGBT persons, as well as the prohibition of blood testing (especially for HIV) for purposes of job applications.



A program has been proposed that would provide access to justice and the prevention of violence based on sexual orientation and gender identity. Proposed measures also include sensitization training for judicial officers and the establishment of a specialized public prosecutor's office for LGBT.

The proposals focus on specific issues of young LGBT, lesbian and bisexual women, male and female transsexuals, LGBT adults over 60, and gay and bisexual men, and specific issues relevant to each segment of the population are addressed.

The collaboration between FALGBT and the UN System in Argentina, through UNAIDS and UNDP has produced a rich array of proposals for social and political action. FALGBT consulted with its base in order to identify problems and propose solutions. The UN provided technical assistance and legitimacy, and promoted political dialogue for equal rights for LGBT persons. Recent successes include the establishment of an ombudsman's office on homophobic violence in the Security Ministry, together with training for personnel; the approval of the Gender Identity Law; the implementation of egalitarian marriage for foreigners; and professional training programs for trans men and women through the Ministry of Labor. These programs can all be documented and the process be shared in south-to-south cooperation with other countries in Latin America and the world.

Several UN institutions have also contributed greatly to the promotion of citizenship rights for LGBT through publications such as UNESCO's *Education Sector Responses to Homophobic Bullying*, the Pan American Health Organization's document, *Therapies to change sexual orientation lack medical justification and threaten health*, and the United Nations High Commission on Human Rights' groundbreaking report, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, which was released in November 2011.

The United Nations Secretary-General, Ban Ki-moon expressed his concern in a speech on Human Rights Day 2010, when he stated:

“As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity ... Where there is a tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit discrimination on the basis of sexual orientation or gender identity, that encourage violence.”

Initiatives like the ones presented in this article have the potential to bring to reality the Secretary General's desires. UNAIDS vision of “zero discrimination, zero AIDS-related deaths and zero new infections” will be made possible with public policies such as the ones described. 

About the author

Ruben Mayorga graduated as a physician in Guatemala City in 1985 and in 1992 completed a specialization in internal medicine and infectious diseases. From 1992 to 2005, he directed a Guatemalan NGO, OASIS, and a Latin American network, ASICAL, dealing with HIV prevention and care among gay men and transsexual women. He has worked in a private clinical practice, and was the Latin American NGO delegate to the Program Coordinating Board of UNAIDS. He is currently the UNAIDS Coordinator for Argentina, Chile, Paraguay and Uruguay. He has supported the development and implementation of public policies to improve the national response to HIV with a human rights focus and to foster inter-sectoral work. Ruben married his long-time partner, Erickson, in May, 2011.

Information Sources

[Message of the UN Secretary General to the Human Rights Council March 2012](#)

[Video of UN Panel Discussion March 2012](#)

[First UN Report on the Human Rights of LGBT people](#)

[International Gay and Lesbian Human Rights Commission](#)

[ARC International](#)

[Organization for Refuge, Asylum & Migration](#)

[Iranian Railroad for Queer Refugees](#)

[Europe's Largest Gay News Service: Pink News](#)

[The Voice of Africa's LGBTI Community: Behind the Mask](#)

Just Governance Group News



JGG expands its consulting community

JGG introduces Lloyd Lipsett, of LKL International, as an associated senior consultant. Lloyd is a Canadian lawyer with 15 years of experience in international human rights, democratic development, the rule of law and corporate social responsibility. Lloyd's international human rights expertise has been shaped by his work with public and private companies, government departments and agencies, multilateral agencies, non-governmental organizations and First Nations councils.

JGG welcomes another intern

Ottawa University law student Carly Sloshower will support JGG knowledge development initiatives over the next three months. Prior to her law studies Carly obtained a degree in politics and international development from the University of Winnipeg. At JGG she will conduct research on the right of indigenous peoples to consult, access to justice, and human rights impact assessments. She will also draft initial position papers to share with JGG's community of practice.



Gender equality in the Public Prosecution in the West Bank

JGG consultant Lisa Lachance travelled to the West Bank in early May in order to work with the *Sharaka* project and a local JGG consultant, Varsen Aghabekian, to identify and plan gender equality initiatives with the Office of the Attorney General of the Palestinian Authority. The Canadian Department of Justice contracted JGG to support the gender equality aspects of this institutional strengthening initiative with the Public Prosecution.



Defensoría del Pueblo – Bolivia

JGG executive director, Kimberly Inksater, is working with a team of Bolivian and Peruvian experts to conduct a two-part consultancy in collaboration with the national human rights institution of Bolivia and the cooperation agencies that collectively support the Defensoría's work. The team conducted an external evaluation of the 2007-2011 Institutional Strategic Plan and is now providing advice related to the strategic planning activities related to the next five-year period.

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