



“We Just Want to Live Our Lives”

El Salvador's Need for Legal Gender Recognition

HUMAN
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COMCAVIS TRANS is a Salvadoran organization whose mission is to carry out national and international political and public advocacy for the promotion and defense of the human rights of trans and LGBTI people (including populations that are incarcerated, people living with HIV, migrants, internally displaced persons, asylum seekers/refugees, and deportees with protection needs). The organization provides assistance and training services.

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Summary

In February 2022, the constitutional chamber of El Salvador's Supreme Court issued a landmark ruling advancing the rights of the country's embattled transgender community. It ruled that the constitutional clause barring discrimination based on sex encompasses discrimination based on gender identity, and that El Salvador's law governing legal name changes must allow trans people to modify their legal name in accordance with their gender identity. The court gave the Legislative Assembly one year to make the necessary reforms.

This jurisprudence, grounded in international human rights law, was a welcome breakthrough for transgender people in a country where trans activists have for years denounced the high levels of discrimination that their communities face and pushed to gain legal gender recognition. To give the court decision full effect and address the ongoing harms faced by trans individuals, the Legislative Assembly should not only implement the constitutional guarantee in law, but also recognize the right of trans individuals to change their gender marker, a critical step not yet addressed by the constitutional chamber.

Prior to the Supreme Court decision, a "gender identity bill" to create a procedure for legal gender recognition, developed in consultation with trans groups and pending in the legislature since March 2018, had been shelved by a legislative committee in May 2021 without debate by the newly elected pro-government lawmakers. One lawmaker described the shelved bill as "obsolete and not in accordance with reality." This report documents otherwise.

This joint Human Rights Watch-COMCAVIS TRANS report exposes the pervasive discrimination that trans people experience due to a mismatch between their gender and their identity documents. The report focuses on discrimination in four key areas: health, employment, voting, and banking. Human Rights Watch and COMCAVIS TRANS found that a lack of adequate documents, often in combination with anti-trans bias, seriously impedes the realization of these rights for trans people.

Most of the trans people we interviewed told researchers that they experienced discrimination when they visited public healthcare facilities because their documents do not match their gender identity. Some said that due to past experiences of discrimination, they avoid public healthcare completely, including by self-medicating, or waiting until they are very ill to seek treatment. We heard accounts of clinic staff exposing people as transgender by calling out their legal names in waiting rooms, subjecting them to onerous questioning about their identities, and humiliating and mocking trans people. Many of the trans people we interviewed described similar discriminatory and humiliating experiences when trying to obtain Covid-19 vaccines.

Some trans interviewees recounted instances of employment discrimination—particularly from potential employers—directly related to the fact that their documents did not reflect their gender identity. In some cases, discriminatory treatment only began after employers realized the interviewees were trans when they looked at their documents, while some employers explicitly told trans people they would not be hired because they are transgender. Many of the trans people we interviewed said they had difficulties securing or maintaining a job because their documents did not match their gender expression or because prospective employers identified them as transgender. Some interviewees said that they were employed in or had at some point pursued informal work as street vendors, sex workers, or farm assistants even though they were qualified for at least some work opportunities in the formal economy. Virtually all of the trans people we interviewed expressed a desire for formal, stable employment.

Most of the trans people interviewed for this report told Human Rights Watch and COMCAVIS TRANS that they faced obstacles accessing their own money and remittances from family living abroad, citing examples in which representatives of different financial institutions across the country did not believe the identity documents they presented belonged to them. Some had tried to secure financial loans from banks to start their own small businesses but were unable to pursue this option because their identification documents did not match their gender expression. One interviewee summed up the frustration that many interviewees experiencing discrimination felt: “I can’t get a job, or a loan, so how can I get ahead in life?”

In recent years, voting has been made easier for transgender people. The Supreme Electoral Tribunal issued directives to representatives at voting centers across El Salvador,

which includes an instruction to not discriminate based on gender identity. Many of the trans people we interviewed said they faced no impediment to their right to vote in the February 2021 elections. Two trans women told researchers that they were not allowed to vote because their identity document did not match their gender identity and expression, while several other trans people said they were allowed to vote but faced questioning about their identity documents and felt humiliated as a result. While our interviews suggest that some problems remain, they also suggest that the directives from the electoral authority had a positive impact on ensuring the right to vote for transgender people. El Salvador should build on this to ensure that no eligible person is excluded from voting.

The February 2022 Supreme Court decision focused on El Salvador's law governing name changes, ruling that transgender people should be able to change their names in accordance with their identities. An obvious—and much needed—additional step is to allow them to change their gender marker. The Legislative Assembly should act to ensure this by debating and passing the pending gender identity bill. If passed into law, this bill would ensure full legal recognition of transgender people's gender, including with respect to gender markers in their documents.

The legislature should also heed the Supreme Court's interpretation that the sex discrimination provision in El Salvador's constitution's non-discrimination clause protects against discrimination based on gender identity, including by passing a comprehensive non-discrimination bill that explicitly includes gender identity and expression. Accurate identity documents and robust non-discrimination protections will go a long way to address the root cause of discrimination that trans people face in society, in line with international human rights law.

Methodology

Human Rights Watch and COMCAVIS TRANS conducted research for this report between February 2021 and March 2022. Some interviews were conducted remotely due to Covid-19 travel restrictions between February and April 2021; others were conducted during a research trip to San Salvador, San Luis Talpa, Santa Ana, Santa Tecla, La Unión, and Zacatecoluca in November 2021. Follow-up research, including additional interviews, was conducted in February and March 2022.

Human Rights Watch and COMCAVIS TRANS jointly conducted a total of 50 interviews for this report. Forty-three of these interviewees were with transgender people living in seven out of the fourteen departments of El Salvador: La Libertad, La Paz, La Unión, San Salvador, San Vicente, Santa Ana, Sonsonate. For further background, Human Rights Watch conducted additional interviews with three other civil society organizations, two current lawmakers in El Salvador's legislature, and two diplomatic missions in El Salvador.

Human Rights Watch requested meetings with representatives of the Ministries of Health (Ministerio de Salud), Labor and Social Welfare (Ministerio de Trabajo y Previsión Social), and Culture (Ministerio de Cultura), as well as with representatives of the National Registry of Natural Persons (Registro Nacional de las Personas Naturales) and the Supreme Electoral Tribunal, to present the report's findings and obtain any additional information they wanted to share. Only the National Registry of Natural Persons responded and granted a meeting and the information it provided is included in the corresponding section of the report.

COMCAVIS TRANS, which provides social services to transgender people across the country, identified trans interviewees within its network. The organization Trans Men El Salvador provided additional interviewees from its network. No compensation was paid to interviewees. Human Rights Watch reimbursed public transportation fares for interviewees who traveled to meet the researchers and provided a snack or meal when the interviews occurred during a mealtime.

The researcher obtained verbal informed consent from all interviewees and explained to them how we would use their stories, that they did not need to answer any questions, and that they could stop the interview at any time. All Interviewees were given pseudonyms in published materials for the project.

I. Background

The human rights violations against transgender people in El Salvador documented in this report occur in the broader context of pervasive violence, impunity, and poverty in El Salvador.

The Ombudsperson's Office (Procuraduría para la Defensa de los Derechos Humanos) reported that between 2015 and 2020, the police committed 179 extrajudicial killings; 25 resulted in convictions.¹ Historically, security forces have also committed sexual assaults, enforced disappearances, and torture. Gangs exercise territorial control over some neighborhoods, particularly low-income neighborhoods,² and extort residents throughout the country, killing, disappearing, raping, or displacing those who resist. According to media reports from *El Faro*, security and elected officials have collaborated with gangs in criminal operations, and political parties have negotiated with the groups, including in exchange for gang members' support during elections.³ From 2011 to October 2020, more than 70,000 people were internally displaced, mostly due to violence by security forces and gangs.⁴ An estimated 31 percent of Salvadorans live in poverty, and about 8 percent in extreme poverty.⁵

Lesbian, gay, bisexual, and transgender (LGBT) people face unique challenges in El Salvador. In January 2021, Human Rights Watch published a report based on 60 interviews, documenting a complex web of violence and discrimination against LGBT people that threatens their physical safety, limits their life choices, and even leads them to flee the

¹ University Observatory of Human Rights (OUDH), *Report on Extrajudicial Killings in El Salvador 2015-2020*, https://drive.google.com/file/d/1cduPYGSj1Nc1aGYf4M_WJMdFV46wsUc/view (accessed April 18, 2022), pp. 57, 66.

² See, for example, Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and#3298>, sec. IV.

³ Carlos Martínez, Óscar Martínez, Sergio Arauz, Efrén Lemus, "Bukele Government Has Been Negotiating with the MS-13 for a Year to Reduce Homicides and for Electoral Support," *El Faro*, September 3, 2020, https://elfaro.net/es/202009/el_salvador/24781/Gobierno-de-Bukele-lleva-un-a%C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral.htm (accessed March 17, 2022).

⁴ UNHCR, "Fact Sheet: El Salvador," October 2020, https://www.acnur.org/op/op_fs/5f8a13394/acnur-el-salvador-hoja-informativa-octubre-de-2020.html (accessed April 18, 2022).

⁵ Economic Commission for Latin American and the Caribbean, *Social Panorama of Latin America 2021*, (Santiago: ECLAC, 2022), https://repositorio.cepal.org/bitstream/handle/11362/47719/1/S2100654_en.pdf (accessed March 15, 2022), p. 83.

country.⁶ Security forces, gangs, and victims' families and communities are perpetrators; harm occurs in public spaces, homes, schools, and places of worship. COMCAVIS TRANS has found that this insecurity leads to the internal displacement of LGBT people.⁷ The group provides direct social services to transgender people in El Salvador that have fled their homes. In 2021, they supported around 150 people.

Although no statistics are available on LGBT people's economic situation in El Salvador, many interviewees said that family rejection and discrimination lead to a higher likelihood of economic marginalization, particularly for trans women. In this context of violence and economic precarity, Human Rights Watch and COMCAVIS TRANS have found, the government of El Salvador is failing to adequately protect LGBT people.

Limited Legal Protections for Transgender People

Non-Discrimination

In a landmark February 2022 ruling, the constitutional chamber of the Supreme Court held that the category of "sex" in the constitution's non-discrimination clause includes "gender" and, by extension, "gender identity," citing guidance from the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights.⁸ In 2009, this same chamber interpreted the same provision to include "sexual orientation."⁹

This means that, under the constitution, people in El Salvador are protected on grounds of sexual orientation and gender identity. Nevertheless, El Salvador does not have comprehensive civil anti-discrimination legislation explicitly prohibiting discrimination based on sexual orientation, gender identity, or gender expression. In May 2021, the legislature's Committee on Women and Gender Equality (Comisión de La Mujer y la Igualdad de Género) shelved the Special Law for Equality and Non-Discrimination, an anti-

⁶ Human Rights Watch, *I'm Lucky to Still Be Alive: Violence and Discrimination Against LGBT People in El Salvador*, (New York: Human Rights Watch, 2021), https://www.hrw.org/sites/default/files/media_2021/03/%E2%80%99CI%E2%80%99m%20Lucky%20to%20Still%20Be%20Alive%E2%80%9D.pdf.

⁷ COMCAVIS TRANS, *Flee and Survive: A Look at LGBTI Displaced People in El Salvador and the Risks They Face*, June 2020, (San Salvador: COMCAVIS TRANS, 2020), <https://www.comcavis.org.sv/archivos/categorizados/124.pdf?1599857307> (accessed July 7, 2022).

⁸ Republic of El Salvador, Supreme Court of Justice, Constitutional Chamber, Decision 33-2016/195-2016 of February 18, 2022, pp. 15, 20.

⁹ Republic of El Salvador, Supreme Court of Justice, Constitutional Chamber, Decision 18-2004 of December 9, 2009, <https://www.comcavis.org.sv/archivos/categorizados/63.pdf?1586958596> (accessed March 15, 2022).

discrimination bill that would have made explicit reference to gender identity and sexual orientation.¹⁰

Other anti-discrimination provisions include Executive Decree 56 of 2010, which states that any executive branch policies, activities, actions, omissions that result in discrimination on the basis of sexual orientation or gender identity are prohibited, and that all policies need to be reviewed for compliance with the decree.¹¹ While an important measure, the decree, which only applies to the executive branch and not to other public or private actors, is of limited application. There is no comprehensive civil law prohibiting discrimination by public and private actors.

Hate Crimes

In 2015, El Salvador passed a reform to its criminal code that increased sentences for homicides and threats motivated by a victim's gender identity and expression, as well as their sexual orientation and other categories.¹² The legislation did not cover other violent acts such as assault and rape. In the intervening seven years, however, there has not been a single conviction applying this aggravating circumstance, including to the many violent murders of LGBT people in the country.¹³ One reason for that may be that, while the Ministry of Justice and Public Security tracks crimes against LGBT people,¹⁴ including through an "LGBT" box that can be checked on complaint forms, prosecutors frequently do not ask about complainants' sexual orientation or gender identity, likely leading to underreporting of hate crime cases.¹⁵

¹⁰ The bill is on file with Human Rights Watch.

¹¹ Republic of El Salvador, Executive Branch, Decree No. 56 (Órgano Ejecutivo, Decreto No. 56), undated, ilo.org/dyn/natlex/docs/ELECTRONIC/86392/97471/F1174021459/SLV86392.pdf (accessed May 1, 2022).

¹² Republic of El Salvador, Legislative Decree 106 of 2015 (Decreto Legislativo No. 106 de fecha 03 de septiembre de 2015), <http://www.jurisprudencia.gob.sv/busqueda/showExtractos.php?bd=2¬a=732213&doc=558819&&singlePage=false> (accessed March 15, 2022). The reform increases the maximum sentences for homicide to 30 to 50 years if committed by an ordinary citizen and 40 to 70 years if committed by a public official, if a murder is ruled to be a hate crime.

¹³ Cristian González Cabrera (Human Rights Watch), "Justice for LGBT Salvadorans Requires Reckoning with Hate," commentary, *La Prensa Gráfica*, April 11, 2020, <https://www.hrw.org/news/2020/04/11/justice-lgbt-salvadorans-requires-reckoning-hate>.

¹⁴ Mariana Arévalo, "LGBT Community Included for the First Time in an Official Report on Violence," *La Prensa Gráfica*, December 14, 2019, <https://www.laprensagrafica.com/elsalvador/Incluyen-por-primera-vez-a-comunidad-LGBTI-en-un-informe-oficial-sobre-violencia-20191213-0800.html> (accessed March 15, 2022).

¹⁵ Human Rights Watch interview with Marina de Ortega, Director for women, children, adolescents, LGBTI people and other vulnerable groups at the Attorney General's Office, San Salvador, May 2, 2019.

The Lack of Legal Gender Recognition in El Salvador

In order to address the absence of a path to legal gender recognition in El Salvador, Lorena Peña, then a deputy in the legislature, introduced, in 2018, the draft Gender Identity Law in the Legislative Assembly, drafted in collaboration with trans organizations, that would have created a process for legal gender recognition.¹⁶ The parliamentary Committee on Women and Gender Equality discussed the bill in May 2019 and March 2021, but it never advanced to a full parliamentary debate.¹⁷

In May 2021, the same committee of the newly elected legislature (2021-2024) shelved the gender identity bill, a move that trans activists sharply criticized.¹⁸ Deputy Marcela Pineda, a current member of the committee, described the gender identity bill, a non-discrimination bill covering gender identity and sexual orientation, and 28 other bills that had come before the committee as “obsolete and not in accordance with reality,”¹⁹ a basis for shelving them.

In August 2021, deputies Anabel Belloso and Linda Fuentes, in collaboration with LGBT organizations, submitted an updated version of the bill for consideration by the Legislative Assembly.²⁰ The Committee on Women and Gender Equality, where the bill is pending once again, had not discussed the bill as of this writing.

National Identity Document Photos

In the absence of any legal gender recognition procedure or relevant training, civil society organization, including COMCAVIS TRANS, have conducted workshops between 2017 and

¹⁶ FMLN Parliamentary Group, Draft Gender Identity Law, March 22, 2018, <https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/C28A646B-453C-48EB-A98F-55E1F6E47C6B.pdf> (accessed March 18, 2022).

¹⁷ “COMISIÓN DE LA MUJER EVALÚAN ANTEPROYECTO DE LEY DE IDENTIDAD DE GENERO EN EL SALVADOR,” video clip, YouTube, March 14, 2019, <https://www.youtube.com/watch?v=MwdkDlmavew> (accessed September 11, 2020); Alessia Genoves, “Chronicle: Proposal for a Gender Identity Law, Without Response for 3 Years,” *ContraPunto*, March 11, 2021, <https://www.contrapunto.com.sv/cronica-propuesta-de-ley-de-identidad-de-genero-sin-respuesta-desde-hace-3-anos/> (accessed March 18, 2022).

¹⁸ Paula Rosales, “Protests Against the Rejection of the Gender Identity Law in El Salvador,” *Agencia Presentes*, May 19, 2021, <https://agenciapresentes.org/2021/05/19/protestan-por-rechazo-a-ley-de-identidad-de-genero-en-el-salvador/> (accessed March 18, 2022); Deputy Claudia Ortiz’s Twitter page, May 14, 2021, <https://twitter.com/ClaudiaOrtizSV/status/1393285719762870275?s=20&t=MaegEqduErm1SDtxabq8A> (accessed March 18, 2022).

¹⁹ Ibid.

²⁰ A copy of the bill is on file with Human Rights Watch and COMCAVIS TRANS.

2022 with over 200 staff members of the National Registry of Natural Persons, the agency in charge of issuing national identification cards (*Documento Único de Identidad*, or DUI), including through its branches known as “DUICentros.”²¹ The goal of the workshops was to raise awareness about transgender people, including the need for identity card photographs that accurately reflect their gender identity.

Representatives of the National Registry of Natural Persons told Human Rights Watch that they are committed to working with civil society to eliminate discrimination in DUICentros,²² citing Executive Decree 56 of 2010 as the basis of this approach.²³ While they said that DUICentros allow transgender people to take their pictures according to their gender identity, they acknowledged that there may still be cases of discrimination at DUICentros and more workshops and awareness-raising is required.²⁴

While some of the trans people interviewed by Human Rights Watch and COMCAVIS TRANS said they had no problems when they went to a DUICentro to take a new photograph that reflected their gender identity for their identity cards, others reported abuses. For example, one trans woman from Santa Ana explained what happened to her at a DUICentro in Santa Ana in January 2021:

The woman working there said that I had to take my make-up off. I asked her why and she said, “You are a boy, and we don’t permit these sorts of things in the identity document. It’s as if you are trying to impersonate someone else.” She gave me a wet towel and made me take off my make-up. It was humiliating. I have a lot of problems because of the picture in my document.²⁵

²¹ On July 13, 2022, the National Registry of Natural Persons shared with Human Rights Watch a list of some of the workshops that its staff had participated in. The list is on file with Human Rights Watch.

²² Remote interview with Ángela María Deleón de Ríos, director of Citizenship Identification, and Erika Melissa Vargas, coordinator of the Supervision Unit and DUICentro Control, National Registry of Natural Persons, July 13, 2022.

²³ Republic of El Salvador, Executive Branch, Decree No. 56 (Órgano Ejecutivo, Decreto No. 56), undated, ilo.org/dyn/natlex/docs/ELECTRONIC/86392/97471/F1174021459/SLV86392.pdf (accessed May 1, 2022).

²⁴ Remote interview with Ángela María Deleón de Ríos, director of Citizenship Identification, and Erika Melissa Vargas, coordinator of the Supervision Unit and DUICentro Control, National Registry of Natural Persons, July 13, 2022.

²⁵ Interview with Sandra L. (pseudonym), Santa Ana, November 24, 2021.

Other trans women described similar experiences, contrasting their treatment with that of cisgender women, who were allowed to wear makeup for their photos. One trans man said National Registry officials told him to let his hair grow to appear more feminine. He was turned away and went to another DUICentro, where he was able to get his picture taken.

Representatives of the National Registry of Natural Persons told Human Rights Watch that “even one case of discrimination is too much.” They cited various mechanisms through which trans people can file complaints of discrimination, including social media channels, though they said they had not recently received any complaints from trans people alleging discrimination at a DUICentro.²⁶

Limited Legal Progress

In at least two cases, judges have allowed transgender people to legally change their name and sex, but only after lengthy court proceedings and on the basis that they had undergone sex reassignment surgery, an invasive legal requirement in contravention of international human rights standards.²⁷

According to the Organization of American States, in 2017, the Supreme Court of Justice heard the case of a person whose chosen name had been legally recognized by a court in the United States. The case revolved around the recognition of this legal decision in El Salvador. The court ruled that the petitioner could change their legal name in accordance with their gender identity, but not their legal gender since the US court ruling did not refer to this issue.²⁸

Between 2019 and 2022, the non-profit Foundation for the Studies of the Application of Law (FESPAD), in collaboration with trans organizations, initiated five legal proceedings on behalf of four trans women and one trans man, petitioning different family courts to rectify

²⁶ Remote interview with Ángela María Deleón de Ríos, director of Citizenship Identification, and Erika Melissa Vargas, coordinator of the Supervision Unit and DUICentro Control, National Registry of Natural Persons, July 13, 2022.

²⁷ Organization of American States, *Panorama of the Legal Recognition of Gender Identity in the Americas* (CITY: OAS, 2020), p. 41
<http://clarcierv.com/identidaddegenero/public/files/PANORAMA%20DEL%20RECONOCIMIENTO%20LEGAL%20DE%20LA%20IDENTIDAD%20DE%20GENERO%20EN%20LAS%20AMERICAS.pdf> (accessed March 18, 2022); “Zacatecoluca Judge Authorizes Name Change for Trans Woman,” *El Mundo*, April 30, 2019, <https://live.elmundo.sv/juzgado-de-zacatecoluca-autoriza-cambio-de-nombre-a-mujer-trans/> (accessed March 19, 2022).

²⁸ Organization of American States, *Panorama of the Legal Recognition of Gender Identity in the Americas*, p. 41.

the applicants' legal names and gender in accordance with their gender identity.²⁹ In 2021, the Family Chamber of San Salvador, an appeals court, resolved two of these cases in favor of the applicants, ordering new birth certificates with their chosen names reflecting their gender identity.³⁰ The Chamber did not order a change in their legal gender, which would include a change of gender marker. With these rulings, the applicants were able to correct their legal names on their official documents.³¹

Setbacks for Transgender People Under President Nayib Bukele

Since President Nayib Bukele took office in 2019, initiatives put in place under the previous government aimed at promoting LGBT inclusion have been downgraded or not implemented.

In 2010, the government had established a Directorate of Sexual Diversity in the Secretariat of Social Inclusion charged with training government employees (including police officers) on gender identity and sexual orientation, and conducting research on national LGBT issues.³² In 2017, the directorate launched an Inclusion Index aimed at setting standards and evaluating all government ministries and agencies on LGBT inclusion. This seemed to motivate government institutions: in public statements, several explicitly mentioned the scores they received in their first evaluation.³³ But in June 2019, President Bukele dissolved the secretariat and subsumed the sexual diversity directorate into an existing Gender Unit in the Ministry of Culture, renamed the Gender and Diversity Unit.³⁴

²⁹ Phone interview with Kerlin Belloso, representative of FESPAD, March 19, 2022.

³⁰ Ibid. One of these rulings is on file with Human Rights Watch and COMCAVIS TRANS.

³¹ Ibid.

³² Human Rights Watch interview with Cruz Torres, former director of sexual diversity in the Secretariat of Social Inclusion, San Salvador, April 29, 2019.

³³ Cruz Edgardo Torres Cornejo, "El Salvador Institutional LGBTI Inclusion Index" ("Índice de Inclusión Institucional LGBTI El Salvador," <https://www.transparencia.gob.sv/institutions/capres/documents/238541/download> (accessed March 18, 2022); Ministry of Labor and Social Welfare, "Social Inclusion Secretariat Recognizes MTPS Efforts in Support of the LGBT Community," February 7, 2018, <https://www.mtps.gob.sv/noticias/secretaria-inclusion-social-reconoce-labor-del-mtps-favor-comunidad-lgbti> (accessed September 11, 2020); Ministry of Labor and Social Welfare's Facebook page, "Inclusive work [...] in favor of the LGBTI community is recognized [f]or the second consecutive year," May 15, 2019, <https://www.facebook.com/MTPSElSalvador/photos/reconocen-labor-inclusiva-que-realiza-el-mtps-a-favor-de-comunidad-lgbtipo-segu/1517435901721395/> (accessed March 18, 2022).

³⁴ Valeria Guzmán, "LGBTI Federation Questions the New Government's Abandonment of Sexual Diversity," *El Faro*, November 4, 2019, https://elfaro.net/es/201911/el_salvador/23760/Federaci%C3%B3n-LGBTIcuestiona-el-desamparo-a-la-diversidad-sexual-en-el-nuevo-gobierno.htm (accessed March 18, 2022)

LGBT activists criticized the move, protesting that few of their grave concerns regarding safety and discrimination could be adequately addressed under the ambit of culture.³⁵ They also cited the lack of follow-through on a set of LGBT awareness trainings, including a 2018 campaign by the Ministry of Justice and Public Security entitled “I’m Doing What’s Right.”³⁶

Recent Progress for Legal Gender Recognition

As described above, a ruling by the constitutional chamber of the Supreme Court found in February 2022 that the constitution’s “sex” provision in the non-discrimination clause protects against discrimination based on gender identity. The case originated as a challenge to the fact that the law governing personal names (Ley del Nombre de la Persona Natural) does not explicitly give transgender people the ability to change their legal names in accordance with their gender identity. The court found this unconstitutional, ruling that it “constitutes unjustified discriminatory treatment.”

Crucially, the court held that one’s name is closely linked to the right to identity, and that the construction of identity “continues throughout the life of the human being, in a continuous process that encompasses a multiplicity of elements and aspects that exceed the strictly biological concept, and that corresponds to the ‘personal truth’ and biography of the human being.”³⁷ The court gave the National Assembly until February 2023 to make the necessary legal changes so that all people are able change their name to one that reflects their gender identity.

³⁵ Oscar Lopez, “Pressure Mounts for El Salvador to Investigate Wave of LGBT+ Killings,” *Reuters*, November 21, 2019, <https://www.reuters.com/article/us-el-salvador-lgbt-murder-trfn/pressure-mounts-for-el-salvador-to-investigate-wave-of-lgbt-killings-idUSKBN1XW01G> (accessed March 18, 2022); Valeria Guzmán, “LGBTI Federation Questions the New Government’s Abandonment of Sexual Diversity,” *El Faro*, November 4, 2019, https://elfaro.net/es/201911/el_salvador/23760/Federaci%C3%B3n-LGBTIcuestiona-el-desamparo-a-la-diversidad-sexual-en-el-nuevo-gobierno.htm (accessed March 18, 2022); COMCAVIS TRANS, *Flee and Survive: A Look at LGBTI Displaced People in El Salvador and the Risks They Face*, p. 9.

³⁶ “Government of El Salvador Fires LGBTI personnel,” *Agencia Presentes*, September 5, 2019, <https://agenciapresentes.org/2019/09/05/gobierno-de-el-salvador-despide-personal-lgbti-y-retrocede-en-derechos-laborales/> (accessed March 18, 2022); Ernesto Valle, “El Salvador Government Ministry Implements Pro-LGBTI Policies,” *Washington Blade*, November 19, 2018, <https://www.washingtonblade.com/2018/11/19/el-salvador-government-ministry-implements-lgbti-policies/> (accessed March 18, 2022); Human Rights Watch telephone interview with Armando P. (pseudonym), representative of Hombres Trans El Salvador, August 5, 2020.

³⁷ Decision 33-2016/195-2016, Supreme Court of Justice, Constitutional Chamber, February 18, 2022, pp. 14-15.

While this ruling narrowly focuses on El Salvador’s law governing name change, the court’s reasoning has wider consequences. The court buttressed its argument with an advisory opinion from the Inter-American Court of Human Rights, which found that in accordance with the American Convention on Human Rights, governments have an obligation to create simple, inexpensive, and non-pathologizing administrative processes for people who wish to change their name in accordance with their self-determined gender identity.³⁸ As the Salvadoran court noted, the advisory opinion applies not only to a name change, but also to the images and gender markers that appear on a person’s identity documents.³⁹

El Salvador’s National Assembly should comply with these court-ordered reforms. It should simultaneously make all necessary changes for the full legal recognition of transgender people’s gender, including with respect to photos and gender markers in identity documents. Such full legal recognition is consistent with El Salvador’s obligations under international human rights law and will provide an important mechanism for combatting all forms of anti-trans discrimination, including in the four areas of ongoing concern detailed below.

³⁸ Ibid, p. 15 (citing *Gender Identity, and Equality and Discrimination of Same-Sex Couples*, Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (November 24, 2017)).

³⁹ Ibid.

II. Right to Health

Public Health Care

El Salvador has universal healthcare coverage. The Ministry of Health is the largest provider of health services in the country open to anyone, while the Salvadoran Social Security Institute (ISSS) is the second-largest and is open to workers who pay into the system.⁴⁰ El Salvador's public health system faces structural challenges such as insufficient funding, poor working conditions for health personnel, and poor-quality services.⁴¹ It is also characterized by limited access to care and high out-of-pocket expenses that disproportionately impact poor and rural Salvadorans.⁴²

Transgender Salvadorans, like anyone else reliant on the public healthcare system, must contend with these structural limitations to optimal health care. In addition, they face discrimination, exacerbated by not having documents that accurately reflect their gender identity. Most of the trans people interviewed by Human Rights Watch and COMCAVIS TRANS said they have experienced discrimination linked to identity documents when they have visited public healthcare clinics, including those run by the ISSS. Some trans people told us prior experience of discrimination has led them to avoid public health care, including by self-medicating or waiting until they are very ill to seek treatment. Cecilia D., a 27-year-old trans woman from San Salvador, summed up this sentiment:

Why go to a public clinic? To face discrimination? I only go to the pharmacy even though I'm basically self-medicating and it may be something more serious. People have a right to health, but we trans people don't access it on account of our gender identity.⁴³

⁴⁰ The Government of El Salvador, WHO, and PAHO, Country Cooperation Strategy PAHO/WHO: El Salvador 2017-2020, 2017, p. 21, **Error! Hyperlink reference not valid.** <https://www.paho.org/es/documentos/estrategia-cooperacion-pais-opsoms-salvador-2017-2020> (accessed January 26, 2022); Salvadoran Social Security Institute, Frequently Asked Questions, <https://www.issss.gob.sv/preguntas-frecuentes/> (accessed January 26, 2022). **Error! Hyperlink reference not valid.**

⁴¹ Antonio Hernández Reyes, "La atención primaria de salud como fundamento de la reforma de salud salvadoreña," Pan American Journal of Public Health, 2018;42:e130. <https://doi.org/10.26633/RPSP.2018.13> (accessed July 7, 2022).

⁴² The World Bank, "Renovating the Public Health Care System in El Salvador," April 25, 2019, <https://www.worldbank.org/en/results/2019/04/25/renovating-the-public-health-care-system-in-el-salvador> (accessed July 7, 2022).

⁴³ Interview with Cecilia D. (pseudonym), San Salvador, November 16, 2021.

Gender Identity Exposed

When transgender people in El Salvador seek medical treatment, they must present identification that does not reflect their chosen name or their gender identity. Many of the people we interviewed said their gender identity was publicly exposed when nurses and other clinic staff called their names in the waiting room in front of other staff and patients. This violates their right to privacy, exposes them to further abuse, and discourages them from seeking treatment.

Nicolás B., a 28-year-old trans man from San Salvador, said he “does not dare” to go the ISSS because presenting his documents “exposes [him] to abuse since [he does] not know if the staff will be transphobic.” He recounted his last visit to ISSS in San Salvador in 2019:

They asked for my identification. The person who called me screamed my name. This was embarrassing. People were looking at me, whispering. Since then, I prefer to just take a pill and stay home so I don’t have to deal with problems with my documents not matching with what I look like. During the pandemic, I even had Covid-19 symptoms, but I preferred to stay home [instead of getting tested].⁴⁴

Carlos H., a 28-year-old trans man from San Vicente, went to the emergency room in Rosales National Hospital in San Salvador in approximately 2018 as he had pneumonia. He recounted to Human Rights Watch and COMCAVIS TRANS what transpired thereafter:

I was purple in the face when I arrived. When they started taking my information and realized I am trans, the problems started. The staff was laughing at me. To tell me the result of tests, they said my whole legal name in front of all the other patients. This is why I do not go to the public hospital.⁴⁵

⁴⁴ Interview with Nicolás B. (pseudonym), San Salvador, November 21, 2021.

⁴⁵ Remote interview with Carlos H. (pseudonym), April 19, 2021.

Carlos said that he suffers from chronic illnesses like asthma and hypertension. His father, a physician, provides him with private treatment “to avoid making a scene” in public facilities.⁴⁶

But those with chronic conditions are not always able to avail themselves of personal connections. Camila M., a 38-year-old trans woman from Santa Ana, recounted her condition:

If untreated, my condition leads to paralysis in my face. I’ve had it since I was young, and I have to get injections at least twice a month. But sometimes I don’t go. It is humiliating. They call me in front of everyone with my male name, sometimes in front of 50 people. Even though the medication is free at the public clinic, if I have the money, I buy the medication at the pharmacy to avoid problems.⁴⁷

Onerous Questioning

In addition to having their gender identity exposed, most of the people we interviewed said that not having documents led to onerous questioning and further humiliation from staff at public healthcare facilities.

Karla S., a trans woman from La Paz, told researchers that clinic and hospital staff have made humiliating and often insulting comments when they see the photo and gender designation on her identification document. She said:

Medical staff have told me, “You are going to see the doctor as a man [not as a woman],” or “You will be seen according to your ID.” They pose rude questions like, “Why are you like that?” or “Why do you want to be a woman if you were born a man?” Even the security guards have mocked me and asked, “What are *you* doing here?” It’s humiliating and frustrating.⁴⁸

⁴⁶ Ibid.

⁴⁷ Interview with Camila M. (pseudonym), Santa Ana, November 24, 2021.

⁴⁸ Remote interview with Karla S. (pseudonym), March 2, 2021.

Sandra L., a 34-year-old trans woman from Santa Ana, told researchers that in 2019 she faced questioning when she went to the San Rafael hospital with a stomach bug that caused her weight loss and vomiting:

I gave the workers my ID and they said that I was not the person in the document. They said, “Where is the patient to whom this ID belongs? He needs to come.” I explained that it was me. After a while, they looked up my parents’ name in their records to confirm that it was me. It was humiliating for them to do this in front of 40 other patients who didn’t know I was trans. This has happened to me some 10 times at different clinics. For this reason, I don’t go to clinics. I’ve been sick like five times, and I’ve preferred to self-medicate.⁴⁹

Karina S., a 30-year-old trans woman from the Department of San Salvador, told researchers that the last time she went to a public clinic was in 2018 when she contracted Chikungunya, which caused fever, vomiting, headache. She and her mother, who was accompanying her, faced questioning:

The doctor told my mother, “He’s a man, why don’t you cut his hair?” I asked him whether he didn’t see that I am a woman. The doctor responded, “Where does it say that? I am looking at your medical card and it says [male first name].” It was humiliating. My mother started to cry. For this reason, I do not seek public health care in my community.⁵⁰

Using Last Names – An Ignored Accommodation

Some interviewees told Human Rights Watch and COMCAVIS TRANS that they have asked the staff to call them by their last name to avoid their gendered first names, but staff explicitly refused to do so, or ignored their request.

Javier N., a 24-year-old trans man from San Salvador, said that he has experienced discrimination every time he has gone to the ISSS, some seven times between 2019 and

⁴⁹ Interview with Sandra L. (pseudonym), Santa Ana, November 24, 2021.

⁵⁰ Interview with Karina S. (pseudonym), San Salvador, November 15, 2021.

2021. Due to this, he said he always avoids going to the doctor and prefers to take over-the-counter medication. He recounted what happened in June 2021 in a San Jacinto clinic when he asked to be called by his surnames:

I showed my documents and told them to call me by my last names, explaining to them that I am a trans man. But when they called me, they screamed my [first] name in front of everyone. I then went through to another waiting area for my appointment. There were three workers calling patients to admit them to their appointment. I went to all three of them and explained that I was trans and asked if they could please call me by my last names. They said OK, but they called me by my legal first name. It is humiliating and exhausting to deal with this.⁵¹

Celso G., a 38-year-old trans man, had a similar experience at a San Salvador ISSS in February 2021:

I asked the nurses to call me by my last names, but they refused because they said I must be called by my first names according to an internal clinic rule. It's humiliating and I am embarrassed because everyone is staring. This sort of thing has happened to me like 15 times.⁵²

Verónica R., a 40-year-old trans woman from La Paz, told researchers that she succeeded in getting a clinic to call her by her chosen name after COMCAVIS TRANS spoke with the hospital administration in September 2021 on her behalf. For 11 years, she had had her gender identity exposed at that clinic every time she went for her diabetes check-up.⁵³ Only one other trans person, Eliseo H., told researchers that staff at his local clinic in San Luis Talpa call him by his last name, though not consistently.⁵⁴

⁵¹ Interview with Javier N. (pseudonym), San Salvador, November 21, 2021.

⁵² Remote interview with Celso G. (pseudonym), March 11, 2021.

⁵³ Interview with Verónica R. (pseudonym), Zacatecoluca, November 22, 2021.

⁵⁴ Interview with Eliseo H. (pseudonym), San Luis Talpa, November 23, 2021.

Four other trans people described at least one positive experience with a doctor who respected their gender identity and referred to them as their gender and preferred name during a consultation.

Private Health Care

Some trans people told Human Rights Watch and COMCAVIS TRANS that, if they can afford it, they opt for private medical care, in large part because they face less discrimination there. All interviewees that went to a private clinic said that their gender identity was respected, but that it comes at a price that is sometimes difficult to pay. As one trans woman from San Salvador told researchers, “But what if we don’t have the money? Or if we are gravely ill [and must go to a hospital]?”⁵⁵

Victoria G., a 30-year-old trans woman from La Unión who has high cholesterol, said that in 2021 she went to a private clinic at least twice, so as to avoid discrimination in public hospitals. This cost her between \$20 and \$25 per visit, in addition to expenses for medication. She told researchers that it is difficult for her to pay these fees due to her unreliable income as a hairdresser. She said, “I have even asked my mother for money to pay, even though I don’t have her acceptance [as a trans person]. But at least there is no discrimination with the private doctor, and he calls me ‘Victoria.’”⁵⁶

One person told Human Rights Watch and COMCAVIS TRANS that, like at public clinics, there can be a lack of awareness about trans issues in private clinics. Fernando C., a 47-year-old trans man from San Salvador, told researchers that during a consultation at a private clinic in March 2021, the doctor told him that he should go to church and should not have penetrative sex.⁵⁷

Covid-19 Vaccinations

El Salvador has international legal obligations to make vaccines available and accessible to everyone. While the government of El Salvador has done relatively well in obtaining sufficient vaccines to cover the population, availability and accessibility are not the same

⁵⁵ Interview with Karina S. (pseudonym), San Salvador, November 15, 2021.

⁵⁶ Interview with Victoria G. (pseudonym), La Unión, November 26, 2021.

⁵⁷ Interview with Fernando C. (pseudonym), San Salvador, November 21, 2021.

thing, especially for marginalized populations, like trans people, that may already face discrimination and barriers to health care.

El Salvador had fully vaccinated 66 percent of its population as of this writing in July 2022, a much higher percentage than its immediate neighbors.⁵⁸ Even so, many of the trans people we interviewed told researchers that they experienced discrimination or humiliation at vaccination centers across El Salvador because their identification documents did not reflect their gender identity. Some said they did not get vaccines as a result of the treatment they experienced.

María H., a 23-year-old trans woman from La Paz, told Human Rights Watch and COMCAVIS TRANS about what she believes was discrimination when she tried to get a second vaccine in October 2021 in El Rosario:

A staff member kept looking at me while I was queuing. When it was my turn, he asked to see my document and there he saw my legal name. He then said, “there are no more vaccinations tickets, you can come tomorrow, it's over today, there are no more vaccines.” I said OK and left the queue. But then I saw that he was giving out vaccination tickets to the people behind me in line. I have not gone back [for the second vaccination], because I may suffer discrimination again since I am obligated to go back to the same vaccination center.⁵⁹

Staff at vaccination centers also questioned trans people about their IDs not matching their gender, humiliating them, and sometimes exposing their gender identity to others.

Patricia M., a 38-year-old trans woman from the Department of La Paz, recounted what happened when she got her first dose of a Covid-19 vaccine in August 2021:

The worker looked at my ID and then said, “Why are you dressed like a little lady? The men must queue there.” She pointed to another queue. She then

⁵⁸ Guatemala: 34 percent; Honduras: 53 percent. Our World in Data, “Share of people vaccinated against COVID-19, July 11, 2022,” <https://ourworldindata.org/covid-vaccinations> (accessed July 12, 2022).

⁵⁹ Interview with María H. (pseudonym), Zacatecoluca, November 22, 2021.

referred to me by my legal name. I was humiliated and angered. The queues were separated by gender.⁶⁰

Juan A., a 32-year-old trans man from the Department of La Paz, said that when he went to get his first shot in August 2021, the staff at the vaccination center were reluctant to give him the vaccine because his ID did not match his gender expression:

I showed the worker my ID, but he said that I was not the person in the document. He asked me if I had a female twin. I said that it was me, but he said that they would have to verify in their system. After a while they allowed me to get the vaccine, but they called me by my female name. It was humiliating.⁶¹

Gabriela M., a 34-year-old trans woman from the Department of La Libertad, described the questioning and actions of a vaccination center worker in September 2021 in the El Salvador Hospital in San Salvador:

After looking at my ID, he started to refer to me as a man. After I explained that I am a trans woman and that he should refer to me as a woman, he said, “Independently of how you look, that does not change the fact that you are a man.” Later, the nurse called me by my masculine name, and she said the vaccination worker had not let her refer to me by my last names. I was outraged.⁶²

Two other trans people, Cecilia D. and Ana A., said that staff at vaccination centers in San Salvador and La Paz, respectively, called them by their preferred names, but the staff also mocked them. Cecilia said she was considering not getting her booster shot due to this:

For the first shot in July [2021] they called me [by my legal name]. The second shot was in October [2021] and I told the staff that I am a trans woman and that I wanted to be called by my last names [and] they said OK.

⁶⁰Interview with Patricia M. (pseudonym), San Luis Talpa, November 23, 2021.

⁶¹Interview with Juan A. (pseudonym), San Salvador, November 17, 2021.

⁶²Interview with Gabriela M. (pseudonym), San Salvador, November 17, 2021.

Then I saw that another staff member arrived, and he and the doctor took my form and started laughing together. They did call me by my last names, but after humiliating me.⁶³

Some other trans people said that during at least one of their vaccination appointments, staff either asked how they wished to be referred to or respected their request to be called by their last names.

Clinics for Sexually Transmitted Infections

In 2011, El Salvador began to roll out clinics for the Sentinel Surveillance of Sexually Transmitted Infections (*Vigilancia Centinela de las Infecciones de Transmisión Sexual*), known as VICITS.⁶⁴ The clinics aim to provide timely interventions for the prevention and treatment of sexually transmitted infections (STIs) and HIV for high-risk groups, including gay, bisexual, and transgender people and sex workers.

Some trans women told Human Rights Watch and COMCAVIS TRANS that they have generally had respectful and adequate medical attention at VICITS clinics, and in fact, a few said these were the only public healthcare providers that they feel comfortable visiting. However, others said that staff at the VICITS clinics have exposed their gender identity to other patients at least once.

Cecilia D. said that at the VICITS clinic in the San Miguelito neighborhood in San Salvador, the nurses always yell out her legal name even though her chosen name is written in pencil on her medical card. She experiences this as humiliating and for this reason she does not frequent these clinics anymore.⁶⁵

⁶³Interview with Cecilia D. (pseudonym), San Salvador, November 16, 2021.

⁶⁴Boris Lozano, “VICITS clinics provide stigma-free care in El Salvador,” *Diario El Salvador*, December 27, 2020, <https://diarioelsalvador.com/las-clinicas-vicits-brindan-atencion-libre-de-estigmatizacion/25895/> (accessed February 25, 2022).

⁶⁵Interview with Cecilia D. (pseudonym), San Salvador, November 16, 2021.

III. Right to Work

As Human Rights Watch documented in our 2021 report on El Salvador, repeated experience with discrimination and violence often forces LGBT people in El Salvador to live life on the margins of society, including in the work they are able to obtain.⁶⁶ This was true of many of the interviewees that Human Rights Watch and COMCAVIS TRANS interviewed for this report, some of whom said that they were employed in or had at some point pursued informal work as street vendors, sex workers, or farm assistants, the only kind of employment they could find. Virtually all expressed a desire for formal employment.

Human Rights Watch and COMCAVIS TRANS heard from trans people who said they suffered discrimination from employers when trying to obtain or maintain jobs explicitly because their identification documents were not congruent with their gender identity. Many other trans people told researchers that they had had difficulties securing or maintaining a job due to anti-trans discrimination, and some of those cases too seem to have been spurred by incongruities between their IDs and gender identity, though the employers made no explicit reference to their documents.

Only five interviewees told researchers that they had been accepted without discrimination by a current or past employer.

Employment Discrimination Explicitly Linked to Identity Documents

Blanca F., a 21-year-old trans woman from San Salvador, said that in 2019 she tried to secure a job at a housekeeping company. Though Blanca told the employer that she had not finished her schooling, the employer said that it did not matter and that she would try to help her. When the employer saw her documents, her attitude changed, and Blanca did not get the job:

When she saw my documents, she realized I was trans. She asked why I physically looked like a woman, but in my ID there was a man's name. She then said that people "like that" cannot be hired. She also said that

⁶⁶ Human Rights Watch, *I'm Lucky to Still Be Alive: Violence and Discrimination Against LGBT People in El Salvador*, sec. III.

because I hadn't finished high school that I couldn't have the job. I understood. I thanked her and left. Now I sell vegetables in the streets. I have never tried again to get a formal job.⁶⁷

Sergio M., a 38-year-old trans man from La Paz, said that in 2019 he tried to secure a job at a well-known gas distribution company in El Salvador. The hiring manager told him, after seeing his documents, that the company “does not hire people like that.” During the pandemic, Sergio said that he had at least 10 phone interviews to secure sales jobs:

They also discriminated against me because of my voice, which is now deep [because of hormone treatments]. When they see my documents, which have a female name, they expect a woman on the phone. When they hear my voice, they ask why there is a man on the phone. I explain [that I am trans], but I have not gotten any of those jobs.⁶⁸

Karla S., a trans woman from La Paz, recounted her experience trying to get a job at a market eatery with about 25 employees in December 2020, from which she said she is still recovering emotionally:

I filled out the application. They asked [job candidates] for our IDs and they called us by our names when it was our time for the interview. When I was called, the security guards began to humiliate me. One said, “you better tell me your ‘man name’ because you are a man” and the other employees were laughing. The security never let me pass. And then the owner of the business sent a worker out to tell me that they wouldn't hire me because of my gender. I left, went to a bathroom, and cried after being humiliated by so many people.⁶⁹

One trans man said that between November 2020 and February 2021 he had gotten three separate informal jobs selling coffee or bread on the street. However, the owners of the businesses all asked for his identification after a week or so of employment. He said that

⁶⁷Interview with Blanca F. (pseudonym), November 11, 2021, San Salvador.

⁶⁸Remote interview with Sergio M. (pseudonym), March 20, 2022.

⁶⁹Remote interview with Karla S. (pseudonym), March 2, 2021.

each time, the employers' attitudes towards him changed when they realized he was a trans man. They began using female pronouns to refer to him and speaking poorly about him. He left all three jobs due to the hostile environment at each workplace.⁷⁰

Other Employment Discrimination

As noted above, many other interviewees said they experienced anti-trans employment discrimination, though it could have been related to their documents, because they were perceived as transgender, or both. For instance, Alejandra M., a 28-year-old trans woman from La Paz, said that in January 2021 she went to apply for a job at a textile manufacturer in San Pedro Masahuat:

I gave my ID to the person in charge of the tests required for the position [to take down the information]. He was nice. I did the tests. I didn't find the tests difficult. At some point while I was there, I think he realized that I am trans. He started looking at me different, making bad facial expressions. He then told me that they were only going to hire a certain number of people and that they'd be in touch. I never got a call back.⁷¹

Pablo A., a 49-year-old trans man from San Salvador, said that he tried very hard to look for a job as a cleaner, but his short hair was an obstacle. He would get interviews for cleaning positions in private homes, but prospective employers told him that he would only be hired if he wore longer hair. It was only when he let his hair grow and presented himself as a woman that he began to get jobs and has now worked in some 10 homes. As he said, "one has to conceal oneself for a job."⁷² Pablo was not sure if the discrimination occurred before or after he shared his legal first name and documents with the employers.

Gloria E., a 21-year-old trans woman from Sonsonate, got a job at a textile manufacturer in 2018. The job interviewer asked her how she would like to be called, which suggested she understood that she was trans. The interviewer made a note in her files. However, once she started working, her supervisor and colleagues only called her by her legal, masculine, name. She suffered harassment at the job. Gloria recounted:

⁷⁰ Interview with Joaquín A. (pseudonym), San Salvador, November 15, 2021.

⁷¹ Remote interview with Alejandra M. (pseudonym), March 25, 2021.

⁷² Interview with Pablo A. (pseudonym), San Salvador, November 18, 2021.

From the beginning, I felt that the supervisor wanted to fire me. She would call me by my legal name, and I asked her not to. She said, “that is your name, look at your [work] file.” She also harassed me about my long hair. After seven months, she fired me for not “giving 100 percent effort and meeting the company’s standards.” However, she never gave me enough training and work to help me advance in the job.⁷³

Gloria could not say if it was her legal name and documents that triggered the supervisor’s bias, or if it would have transpired irrespective of her documents. She said that having documents that reflected her gender identity would likely have prevented some of the discrimination she experienced.

⁷³ Interview with Gloria E. (pseudonym), San Salvador, November 15, 2021.

IV. Economic Rights

Most of the trans people interviewed by Human Rights Watch and COMCAVIS TRANS said they faced obstacles accessing their own money and remittances from family living abroad, particularly in the United States. They faced these obstacles at different financial institutions across the country on account of their identity documents being incongruent with their gender identity. Some also said they tried to secure financial loans from banks to start their own businesses but were not able to do so due to their identification documents. One interviewee summed up the frustration that many interviewees felt in the face of such discrimination: “I can’t get a job, nor a loan. So how can I get ahead in life?”⁷⁴

Gabriela M., a 34-year-old trans woman from La Libertad, told researchers that she has had problems completing transactions at financial institutions some 10 times in her life on account of her ID. She recounted what occurred in 2019 at a bank when she tried to withdraw a remittance:

The worker did not want to give me the money because he said I was not the person in the ID. He said, “I can’t give it to you, you are not the owner of this ID.” I explained that it was me. The manager was called, and it was resolved, but it’s a problem that my identity document does not have my own name. The same thing always happens.⁷⁵

Brenda H., a 21-year-old trans woman from the Department of San Salvador, told researchers that she has had similar experiences. In December 2020, when she tried to open an account at a bank and deposit a check, she was denied service:

The bank worker said that he didn’t know how to make sure that I hadn’t falsified the ID. He said that I couldn’t complete any transaction if the name and the picture did not match my appearance. I had to send my sister with an endorsed check, and she deposited it into her account.⁷⁶

⁷⁴Interview with Karina S. (pseudonym), San Salvador, November 15, 2021.

⁷⁵Interview with Gabriela M. (pseudonym), San Salvador, November 17, 2021.

⁷⁶Interview with Brenda H. (pseudonym), San Salvador, November 15, 2021.

Brenda explained to researchers that she has had to send others to complete transactions on her behalf on at least three occasions in at least two different banks. She also said that she has been denied various remittances at another financial institution and had to go to another institution.

Blanca F. told Human Rights Watch and COMCAVIS TRANS that when she went to a bank in November 2021 to receive a remittance, a teller refused to serve her:

He said, “What are you doing here?” in an informal, rude way. When he asked for my ID, he said, “but you are a man, why are you dressed like a woman?” I said, “What does that have to do with anything?” But he closed his window, left, and did not tend to me. Another worker had to. Everyone was looking at me. There were some 35 people around me, and they were laughing. It was embarrassing.⁷⁷

Some trans people told researchers that they have been denied small business loans at banks because of their IDs. For instance, Karen A., a 28-year-old trans woman from San Salvador, told researchers that in 2019 she went to a bank to try to secure a loan to start a clothing business:

At first, they treated me well. The problems started when the staff saw my documents. The person I spoke to could not believe that the ID was mine. They said that the name did not match [my gender expression]. They explicitly said that they did not give us [trans people] lines of credit.⁷⁸

Karina S., a 30-year-old trans woman from the Department of San Salvador, told researchers that she was similarly denied credit in 2016 when she went to the bank to ask for a loan to launch her own beauty salon:

⁷⁷ Interview with Blanca F. (pseudonym), Zacatecoluca, November 22, 2021.

⁷⁸ Interview with Karen A. (pseudonym), San Salvador, November 16, 2021.

They said, “you are a gay person, but your features are feminine.” I said, “Is that a problem?” and they responded, “Yes, because you look different on your ID, which could be fraud, or the bank may consider it so.”⁷⁹

Sergio M., a 38-year-old trans man from La Paz, said that his bank has twice denied him a loan for a textile printing business, once in 2015 and again in 2020, for the same reasons:

In 2015, I went with all the paperwork and proof of collateral. When the manager saw my documents he said, “Your name is Sergio, but here is another name. What am I supposed to call you if I phone you regarding a late payment?” I said that he could call me by my legal name, but in the end, they denied me the loan. They said the bank had a policy that they had to use my legal name. But I had told them that was OK, so I don’t understand. In 2020, I tried again, but they gave me similar excuses, so I gave up.⁸⁰

In other cases, a trans woman told us she was able to secure a loan after extensive questioning about her identification document, and another trans woman said she left a loan appointment after bank workers began to mock her when they saw her identity document.

⁷⁹ Interview with Karina S. (pseudonym), San Salvador, November 15, 2021.

⁸⁰ Remote interview with Sergio M. (pseudonym), March 20, 2022.

V. Right to Vote

Transgender Salvadorans have often faced discrimination when trying to access the ballot box, in part due to their having documents that do not match their gender identity.⁸¹ The Supreme Electoral Tribunal (TSE) has issued directives on how to respect the rights of trans Salvadorans to its representatives at voting centers across El Salvador charged with upholding the right to vote.⁸² The most recent directive in 2020 says:

A trans person will not be denied the right to vote when the [identification card] photograph does not match their physical appearance (gender expression); it will suffice [...] to verify their physical characteristics and that there be a match between the name, number and signature in the [identification card] and the data in the search registry.⁸³

In February 2021, El Salvador held elections for seats in the Legislative Assembly, municipal councils, and the Central American Parliament (Parlacen). Some trans people told researchers they did not face any impediment when they voted in the February 2021 elections, including two who said that voting center workers used their last names when they needed to call them to pick up their identity document after voting. One trans woman said that she had “no problems” when she and two other trans women all went to vote,⁸⁴ while another said the workers at the voting center “were very nice.”⁸⁵ These accounts

⁸¹ Supreme Electoral Tribunal, Special Memorandum: 2014 Elections, 2014, p. 7, p. 95, <https://www.tse.gob.sv/documentos/memoria-de-elecciones/memoria-elecciones-2014.pdf> (accessed January 28, 2022); see also Magdalena Flores, “Salvadoran Transsexuals Ask to Vote Without Discrimination in Future Elections,” *La Información*, October, 20, 2013, https://www.lainformacion.com/asuntos-sociales/transexuales-salvadorenos-piden-votar-sin-discriminacion-en-proximos-comicios_AVoLQdrMQ2oJhfmGlnaAd6/?autoref=true (accessed January 28, 2022); Paula Rosales, “El Salvador: For the First time Trans People Were Able to Vote Without Incident,” *Agencia Presentes*, February 4, 2019, <https://agenciapresentes.org/2019/02/04/el-salvador-por-primera-vez-se-garantizo-el-voto-a-las-personas-trans/> (accessed January 28, 2022).

⁸² Supreme Electoral Tribunal, “Instructions for Members of Vote Reception Boards,” 2020, p. 26, <https://www.tse.gob.sv/documentos/elecciones/2021/capacitacion/instructivo/Instructivo-Junta-Receptora-de-Votos-JRV-Elecciones-2021.pdf>; Supreme Electoral Tribunal, “Instructions for Members of Vote Reception Boards,” 2019, pp. 21-22, <https://www.tse.gob.sv/documentos/elecciones/2019/capacitacion/instructivo/Instructivo-para-Junta-Receptora-de-Votos-JRV-eleccion-2019.pdf>; Supreme Electoral Tribunal, “Instructions for Members of Vote Reception Boards,” 2018, p. 22, https://www.tse.gob.sv/laip_tse/documentos/marco-normativo/instructivos-electorales/Instructivo-para-Junta-Receptora-de-Votos-elecciones-2018.pdf (accessed January 28, 2022).

⁸³ Ibid.

⁸⁴ Interview with Gabriela M. (pseudonym), San Salvador, November 17, 2021.

⁸⁵ Interview with Brenda H. (pseudonym), San Salvador, November 15, 2021.

suggest the directives described above may have improved trans people's access to the ballot box when compared to past years.

Those experiences, however, were not universal. Two trans women told researchers that they were not allowed to vote due to their identity card not matching their gender identity, while other trans persons said they were allowed to vote, but that they faced questioning and humiliation due to their inaccurate identification documents.

Denied the Right to Vote

María H., a 23-year-old trans woman from La Paz, recounted her experience being denied the right to vote in San Luis Talpa:

There were police guarding the entrance to the voting center and one of the police officers told me that I could not enter the premises because I was not the person on the identification card. I went to find a representative from a political party, but even after they discussed it among themselves, I was not allowed to vote. I would have filed a complaint, but I am scared of reprisals for complaining.⁸⁶

Yolanda V., a 25-year-old trans woman, said she had a similar experience voting in La Unión:

I queued, but when I got to the person in charge, he said that I didn't look like the person on my identification card. And he said I needed to change my picture to vote. Because I didn't want to make a scene, I left.⁸⁷

Questioning and Humiliation

Even for some trans people who have been able to vote, exercising their democratic rights can come at a cost. Confusion that arises when documents do not match gender expression can lead to probing and humiliating questioning in public, at voting stations.

⁸⁶ Interview with María H. (pseudonym), Zacatecoluca, November 22, 2021.

⁸⁷ Interview with Yolanda V. (pseudonym), La Unión, November 25, 2021.

Karina S., a 30-year-old trans woman from the Department of San Salvador, told Human Rights Watch and COMCAVIS TRANS that because she presents as very feminine and therefore does not resemble the picture on her identification card, some workers at the voting station did not want to let her vote. “There was a dispute for 15 minutes among workers representing different political parties and everyone was staring at me,” said Salinas.⁸⁸

Sandra L., a 34-year-old trans woman from Santa Ana, told researchers that the person guarding the entrance, a representative of a political party, did not want to let her inside the premises because she “was not the person on the identification card.”⁸⁹ It was only after someone from an opposing political party came and after discussing the issue for some 30 minutes that she was allowed to enter the building and vote.

Alicia R., a 25-year-old trans woman from La Libertad, said that she was humiliated and intimidated by a worker at the voting center, who said “you don’t look like your identification card. It says a man’s name and you’re wearing makeup.”⁹⁰ After explaining that she is a trans woman, she was let in, but security guards accompanied her during her time in the premises, including while she was voting, which she found intimidating.

Fabiana R., a 30-year-old trans woman from San Salvador, said that before she was allowed to vote, she was made to tie her long hair and remove her makeup, presumably for her to look like the photo on her identification card. She found this humiliating.⁹¹

Nicolás B., a 28-year-old trans man from San Salvador, went to the voting center with a representative of Trans Men, a civil society organization that defends the rights of transgender men in El Salvador, to reduce the chances of trouble on account of his identification card. Despite this, he faced initial resistance:

The worker asked me, “is this really your identification? I will need to verify that it is not fake.” Then he noticed that I was with Trans Men and that there was also a worker with the Ombudsperson’s Office with me and he didn’t

⁸⁸ Interview with Karina S. (pseudonym), San Salvador, November 15, 2021.

⁸⁹ Interview with Sandra L. (pseudonym), Santa Ana, November 24, 2021.

⁹⁰ Interview with Alicia R. (pseudonym), San Salvador, November 17, 2021.

⁹¹ Interview with Fabiana R. (pseudonym), San Salvador, March 4, 2021.

ask any more questions. I think it would've been different if I had been alone.⁹²

The Supreme Electoral Tribunal directives to end discrimination against trans people are laudable and effective in ensuring the right to vote for many, but they are hampered by the absence of legal gender recognition. This means that some people are still denied the right to vote on account of their gender, and others face humiliating questioning in order to be able to vote. Because trans people's national identification cards are often at the core of these violations, the government should further tackle discrimination by enabling trans people to access documents that reflect their gender identity. As one interviewee put it: "There has been progress on the issue of transgender people voting in the Supreme Electoral Tribunal, but more is needed. With a gender identity law, we would no longer have this problem."⁹³

Legal gender recognition is a simple, and much needed, remedy.

⁹² Interview with Nicolás B. (pseudonym), San Salvador, November 21, 2021.

⁹³ Interview with Alicia R. (pseudonym), San Salvador, November 17, 2021.

VI. International Legal Obligations

In November 2017, the Inter-American Court of Human Rights issued an advisory opinion in response to a query from Costa Rica about its obligations under the American Convention on Human Rights.⁹⁴ The court stated that in order to uphold the rights to privacy, nondiscrimination, and freedom of expression, states must establish simple, efficient procedures that allow people to change their names and gender markers on official documents through a process of self-declaration, without invasive and pathologizing requirements such as medical or psychiatric evaluation, and, in the case of those who are married, without the need for divorce.⁹⁵

In March 2021, the Inter-American Court ordered Honduras to put in place a procedure whereby trans people can have their gender identity recognized.⁹⁶ This decision, the first application of the standard set in the advisory opinion, underscores that legal gender recognition is an obligation under the American Convention on Human Rights.

The International Covenant on Civil and Political Rights (ICCPR), which El Salvador ratified in 1979,⁹⁷ provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), and the right to privacy and family (article 17). Governments are obligated under the ICCPR to ensure equality before the law and the equal protection of the law of all persons without discrimination on any ground, including sex (article 26).

The Human Rights Committee, the treaty body responsible for overseeing implementation of the ICCPR, has specifically recommended that governments should guarantee the rights

⁹⁴American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) (ratified by El Salvador in 1978).

⁹⁵Inter-American Court of Human Rights, Gender Identity, and Equality and Discrimination of Same-Sex Couples, Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (November 24, 2017), para. 229, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf (accessed July 7, 2022).

⁹⁶Inter-American Court of Human Rights, Vicky Hernández and Others v. Honduras, Judgment of 26 March 2021, Inter-Am. Ct. H.R. (ser. C) No. 422 (2021), paras. 170-73, https://www.corteidh.or.cr/docs/casos/articulos/seriec_422_esp.pdf (accessed July 7, 2022).

⁹⁷International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by El Salvador November 30, 1979.

of transgender persons including the right to legal recognition of their gender, and that states should repeal abusive and disproportionate requirements for legal recognition of gender identity.⁹⁸

In his report to the UN General Assembly in 2018, the UN independent expert on sexual orientation and gender identity, Victor Madrigal-Borloz, noted that “lack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a fundamental rupture of State obligations ... [W]hen States deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.”⁹⁹ He has said that legal gender recognition must be a simple administrative procedure based on self-determination and without abusive requirements such as medical certification, surgery, treatment, sterilization, or divorce.¹⁰⁰

The Yogyakarta Principles also urge states to ensure that administrative procedures exist whereby a person’s self-defined gender identity can be indicated on all state-issued identity documents that include gender markers.¹⁰¹

⁹⁸ See, for example, UNHRC, Concluding Observations: Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (August 19, 2014), para. 7; UN Human Rights Committee, Concluding Observations: Ukraine, U.N. Doc. CCPR/C/UKR/CO/7 (August 22, 2013), para. 10.

⁹⁹ UN General Assembly, Report of the Independent Expert on Sexual Orientation and Gender Identity: Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, U.N. Doc. A/73/152 (July 12, 2018), para. 23, undocs.org/A/73/152 (accessed June 21, 2022).

¹⁰⁰ UNHRC, The Law of Inclusion: Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, U.N. Doc. A/HRC/47/27 (June 3, 2021), para. 36, <https://undocs.org/A/HRC/47/27> (accessed June 21, 2022).

¹⁰¹ International Commission of Jurists, The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (March 2007), principle 3(c), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (accessed March 18, 2022).

VII. Recommendations

To the government of President Nayib Bukele:

- Publicly support the passage of a comprehensive gender identity law that would provide a simple, inexpensive administrative process whereby transgender people can change their name and gender marker on official documents.

To the Legislative Assembly:

- Pass a gender identity law that allows people to change the sex markers on their official documents through a simple, administrative process, such as filing an application at the National Registry of Natural Persons. Legal gender recognition should not include burdensome requirements that violate rights, such as a requirement to undergo divorce, surgery, or psychiatric evaluation before changing one's gender. The Committee on Women and Gender Equality should take the first step in this process by discussing and voting on the gender identity bill currently pending before it.
- Pass comprehensive civil non-discrimination legislation that explicitly includes gender identity and expression and sexual orientation as protected groups. The law should cover sectors including health, employment, voting, and services. This law should be in conformity with the Supreme Court's 2009 and 2022 rulings on non-discrimination based on sexual orientation and gender identity.

To the Ministry of Health and the Salvadoran Social Security Institute (ISSS):

- Ensure that all medical facilities run by the ministry and institute have comprehensive non-discrimination rules that protect against discrimination based on gender identity and expression. Such rules should involve consultation with Sentinel Surveillance of Sexually Transmitted Infections clinics (*Vigilancia Centinela de las Infecciones de Transmisión Sexual*, VICITS), which have experience working with trans populations, and trans civil society groups.

- Ensure that clinic staff are trained to respect people’s gender identities, including by complying with their requests to be called by their last names or their chosen first names during medical appointments.
- Ensure that Covid-19 vaccination centers have protocols protecting against discrimination based on gender identity and expression.

To the Ministry of Labor:

- Require that employment practices of and provision of services by companies operating in El Salvador, including financial institutions, uphold non-discrimination protections under Salvadoran and international law, including protection against discrimination on the basis of gender identity.
- Create a complaints mechanism in the ministry to receive reports of discriminatory practices, including discrimination on the basis of gender identity, by private companies and public institutions.

To the Ministry of Culture:

- Involve the Gender and Diversity Unit in promoting and helping socialize the gender identity bill, including by training lawmakers on Salvadoran and international legal standards on legal gender recognition. The unit should also push for the introduction of a comprehensive civil non-discrimination legislation that explicitly includes gender identity and expression as a protected class.

National Registry of Natural Persons:

- Continue collaborating with civil society organizations on workshops that raise awareness among staff about gender identity to eliminate all forms of discrimination in DUICentros, including cases of trans people not allowed to take their photographs according to their gender identity.

Supreme Electoral Tribunal:

- Build on advances regarding transgender people's right to vote by establishing a complaints mechanism to receive complaints of discrimination in voting centers and other infringements on the right to vote.

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“We Just Want to Live Our Lives”

El Salvador’s Need for Legal Gender Recognition

In February 2022, the constitutional chamber of El Salvador’s Supreme Court ruled that discrimination based on gender identity is unconstitutional and gave the legislature one year to create a procedure allowing transgender people to change their identity documents to reflect their gender identity. This was an important recognition of the human rights violations trans people in El Salvador too often experience due to a mismatch between their legal documents and their gender identity.

“We Just Want to Live Our Lives” documents the harms related to lack of legal gender recognition in El Salvador. Based on interviews with 43 transgender people in San Salvador, San Luis Talpa, Santa Ana, Santa Tecla, La Unión, and Zacatecoluca, as well as remotely, Human Rights Watch and COMCAVIS TRANS found that trans people experience discrimination in health, employment, voting, and banking linked to inaccurate identity documents.

Trans people told researchers that when they visited public healthcare facilities, clinic staff humiliated, mocked, and exposed them as transgender by calling out their legal names in waiting rooms. Others said that potential employers realized the interviewees were trans when they looked at their documents and denied them employment. Many recounted that they faced obstacles accessing their own money, citing examples in which bank workers did not believe the identity documents they presented belonged to them. Several trans persons said they were allowed to vote but faced humiliating questioning about their identity documents.

Human Rights Watch and COMCAVIS TRANS call on El Salvador’s Legislative Assembly to comply with the Supreme Court’s ruling and international human rights standards and allow trans people to modify their names and gender markers in their documents via a simple, efficient, and inexpensive administrative procedure based on self-declaration.



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