

**Joint Submission on the Situation of Trans and Gender-Diverse Persons' access to Healthcare in Colombia for the 44th Session of the UN Universal Periodic Review**

**2023**

**by Asociación Profamilia, Colombia Diversa and La Liga de Salud Trans**



**I. Introduction**

1. Profamilia is a private non-profit organization that promotes the respect and exercise of Sexual and Reproductive Rights (SRHR) of the entire population in Colombia. Profamilia is a member association of the International Planned Parenthood Federation (IPPF) since 1968. The organization has fifty-seven years of experience in the provision of sexual and reproductive health services (SRHR), through more than 50 clinics located in more than 30 cities in the country, offering prevention and promotion services, diagnostic tests, gynecology consultations, general medicine, urology and contraception, voluntary termination of pregnancy procedures, assisted human reproduction techniques, among others.
2. The *Liga de Salud Trans* or Trans Health League is a network of trans and non-binary people united to demand better access and quality in health, trained to accompany their peers and dialogue with the actors of the system to improve the differential care of trans people. Within the framework of the work carried out by the Liga, several trans people and their families have been trained to be "navigators" of the health system. In this way, they have been provided with tools to fully understand the health system and thus, accompany other trans people to navigate within the system and be able to assert their rights. Currently, the League can provide community support to trans people as navigators can help trans people to better understand and use the health system, relate to other trans people or families, and know about self-care practices.
3. Colombia Diversa is a non-profit organization that has been dedicated, since 2004, to promote and defend the human and legal rights of LGBT people in Colombia. Through strategic litigation, Colombia Diversa has had significant achievements such as the recognition of civil union rights for same-sex couples, the creation of a consistent constitutional precedent on LGBT rights applicable to cases of discrimination and violence; the protection of children of same-sex couples and recognition of the right of LGBTI people to adopt; the recognition of the right of same-sex couples to adopt the partner's biological child; legal recognition for same-sex couples and property rights, social security, immigration, among others.
4. This joint submission addresses the current violations against the rights of trans and gender-diverse people in Colombia regarding the lack of official national information, the limited and discriminatory access to healthcare and the persistence of undue practices such as the forced psychiatry diagnoses and the efforts to change gender identity or so called "conversion therapies."

## **II. Statistical invisibility prevents the State from taking adequate action to protect trans and gender-diverse persons' rights.**

5. Globally, it has been estimated that people who identify as gay, lesbian, bisexual and trans comprise 1.2% of the population; at least 84 million people. in Latin America and Colombia trans people live in highly vulnerable situations, crossed by an intersectionality of factors such as gender, sex, race, socioeconomic status. Due to discrimination in the family, in the educational, labor and health systems, it is common to find in this population situations of homelessness, displacement, sex work, problematic drug use, among other possibilities as a result of discrimination and inequity. These factors affect the health and life of trans people to such an extent that the Inter-American Commission on Human Rights has estimated their average life expectancy in the region at only 30 to 35 years of age<sup>2</sup>.

6. Although Colombia has had a progressive recognition of trans and nonbinary identities, including the possibility of voluntarily registering a different sex in the national ID's<sup>1</sup> and the recognition of non-binary identities<sup>2</sup>, there has been no inclusion of sexual orientation or gender identity on the national census, neither on official records for health surveys nor health administrative records. The general absence of official national information with regards to LGBT people, in general, and trans people, in particular, is an obstacle in the creation of comprehensive actions and public policy measures to ensure the guarantee of trans people's rights in Colombia.
7. Out of this lack of information, there have been recent demographic studies such as the National Survey of Consumption of Psychoactive Substances (*ENCSPA*, in Spanish) and the Large Integrated Household Survey (*GEIH*, in Spanish) that have roughly estimated the LGBT population. In 2019, the ENCSPA estimated that at least 1.2 percent of people between 18 and 65 years old, living in urban centers, would identify as gay, lesbian or bisexual; and 0.05 percent, as trans people. More recently, the GEIH estimated that between June 2021 and May 2022, a total of 490 thousand people over 18 years of age in the country would identify themselves as lesbian, gay, bisexual and trans.
8. Notwithstanding these efforts, **Colombia does not count with official information on the needs of trans people nationwide or with reliable data around trans health situation and demands**, making difficult for authorities and non-governmental organizations to understand the dimension of unsatisfied needs and discrimination within the health system. For this reason, most of the information collected in this report has been gathered by UN agencies and civil society organizations.

#### **Recommendation:**

Improve data collection and statistics on trans and non-binary people on all national data-collection systems, especially those regarding data-collection within the healthcare system and the identification of health needs.

### **III. Lack of regulation affects trans and gender-diverse individuals access to healthcare and leave them vulnerable to discrimination within the healthcare system.**

9. As civil society organizations, we welcome that Colombia has advanced, mainly through rulings of the Constitutional Court, on the recognition of the human rights of trans and gender-diverse persons, included: the possibility of changing name and sex according to self-determined gender identity, the recognition of the right of equality and non-discrimination at schools, health institutions and the workplace, and the inclusion of some gender affirming care procedures within health insurance as an expression of the right to health<sup>3</sup>.

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<sup>1</sup> Decreto 1069 de 2015

<sup>2</sup> See, i.e, Constitutional Court. Ruling T-033 of 2022. Where it is ordered that authorities register a person with the sex "NB" or "non-binary".

<sup>3</sup> See, i.e, Constitucional Court. Rulings C-006 of 2006; T-152 of 2007; T-314 of 2011; T-876 of 2012; T-977 of 2012; T-918 of 2012; T-552 of 2013; T-476 of 2014; T-662 of 2014; T-704 of 2014; T-063 of 2015 and T-099 of 2015

10. However, the lack of specific laws and regulation around who is responsible for providing healthcare to trans persons and what medical standards should be followed have left them vulnerable to discrimination and inadequate care, often amounting to a violation to the rights to life, health, equality, liberty, privacy, information and to be free of ill-treatment.
11. In terms of access to health care, UNFPA has documented cultural, administrative, economic, and service quality barriers that affect the entire LGBT population, including prejudice and stigma against their sexual orientation or identity. Such barriers derive from absence of regulation and the prevalence of stereotypes within the health personnel. This includes reports of delays in authorizations for procedures and services; mistreatment and disrespect towards people; lack of training of health personnel and adequate infrastructure such as the existence of neutral bathrooms in health centers, clinics, and hospitals (also called Healthcare Providers Institutions or IPS -Spanish acronym for Health Provider Institute)<sup>3</sup>.
12. These barriers and forms of discrimination are acute when it comes to trans and gender-diverse persons. In the Study of Experiences of Trans People who have used the Health System of the Ministry of the Interior, it was found that **up to 55% of the people surveyed had felt assaulted by health professionals** and 34% had not been called by their identity name during the service even when they had previously notified the personnel. Hence, **83% of the trans persons surveyed considered that health professionals do not have the training and skills to assist them, 57% had decided not to use these services for fear that their gender identity would affect their care**, and up to 35% had carried out body interventions in an artisanal way as consequence of not being able to access adequate care within the health system<sup>4</sup>.
13. The perception of trans persons about the absence of training by health personnel in the survey is accurate since few programs or universities in the country have been identified that include sexual diversity issues within their professional training, especially within health faculties, as well of the lack of laws, regulations or official guidelines that indicate the way trans persons should receive care from health providers.
14. Specifically, on the area of sexual and reproductive health, Profamilia's research on “how to adapt sexual and reproductive health services to the needs and circumstances of people with trans-life experiences” identified that - in addition to prejudice and the lack of training of health personnel – trans and gender-diverse people were pressured by health personnel to fit into a certain way of being a man or a woman (sexual binarism) and were directly denied services related to reproductive health<sup>5</sup>.
15. More recently, regarding safe access to abortion for trans men and non-binary people, Profamilia and the Trans Abortion Alliance of Colombia identified the absence of information on comprehensive sexuality education that includes the perspective and needs of trans persons, and the lack of recognition by health personnel of the reproductive possibilities of trans and gender-diverse individuals. Likewise, the research identified the absence at the national level of comprehensive health care routes, guidelines, and regulations to facilitate access to health care for trans people<sup>8</sup>.
16. Similarly, although the Colombian Constitutional Court has recognized that gender reaffirmation procedures - such as hormone therapy or surgeries - must be authorized and covered by health insurers and carried out by health care providers<sup>7</sup>, in the practice, trans people encounter refusals from the actors of the health system, being forced to start legal

resources or file judicial claims such as the “tutela” lawsuits in order to receive access to health services. In some cases, even despite having judicial decisions in their favor, the access to healthcare remains out of their reach<sup>4</sup>.

17. The multiple difficulties in accessing the healthcare system and receiving protection from the State have led trans people to develop community care practices to live in dignity and experience loving transitions. In the research “*El Estado no me cuida, me cuidan mis amigas*” made by la *Liga de Salud Trans* identified collective care practices between trans people as a response to the lack of response of health authorities and other state actors, in cases such as the need to access general healthcare services and gender affirming procedures. The report is clear that the dissemination of information through social networks and the generation of citizen oversight mechanisms are not enough to guarantee trans people’s rights and cannot substitute the compliance of the state’s human rights obligations.
18. As mentioned before, most of the recognition of the human rights of trans and gender-diverse persons has occurred within the judicial system in case-by-case analysis. While important, such approach is insufficient when guaranteeing the right to health of trans persons nationwide and from a health system perspective. Due to this lack of general laws, regulations or guidelines, trans and gender-diverse persons are in practice forced to face a long judicial path in order to access basic services and gender affirming care. The need for general legislative and regulation measures has also been noted by the Constitutional Court itself in several opportunities:
19. In the Ruling T- 622 of 2014 when analyzing the lack of informed consent for sex reassignment surgeries, the Constitutional Court exhorted the Ministry of Health to develop in conjunction with the medical community guidelines and/or official clinical practice protocols for the treatment of persons born in intersexual condition of mandatory compliance, so that they receive an agile and appropriate management in health institutions.
20. Later, in the Ruling T-033 of 2022, the Court studied the case of a non-binary person who wanted to register their gender identity on their national ID. The Court recognized this right and urged the Congress to regulate all those rights, obligations and services that are allocated according to sex or gender and to specify the conditions under which the population with non-binary gender identities will have independent access to them.
21. More recently, in the Ruling T-218 of 2022, the Court studied the medical and administrative barriers faced by a 16-year-old boy who wished to access hormone reaffirmation therapy. In this regard, the Court recognized that the obstacles for trans persons to live according to their identity and life plan are violations of their fundamental rights and ordered the Ministry of Health to issue a national clinical practice guide, with its respective protocols, for the comprehensive healthcare of trans individuals and particularly for the provision of medical procedures for gender affirmation<sup>9</sup>.
22. Considering the pressing need of adopting such laws and regulations we call for the UPR recommendations to include specific recommendations to advance in the integration of trans people to society and respect of human rights.

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<sup>4</sup> Colombia Diversa has had several cases where transgender individuals have had their access to healthcare ordered by judicial authorities, and yet, Healthcare Providing Institutions continue to deny the service on the grounds of lack of administrative or technical capacities.

## Recommendations:

- **Move forward with the adoption of a comprehensive law on gender identity and other regulations to make possible the inclusion of trans and gender-diverse persons in society and the guarantee of their human rights, such as the right to health.**
- Adopt medical guidelines and protocols to guarantee good-quality healthcare services and health-related information for trans and gender-diverse persons.

### **IV. The persistence of forced psychiatric diagnosis and gender identity change efforts against trans and gender-diverse persons require action.**

23. As recognized by the UN Special Rapporteur on the Right to Health and the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, to “end the categorization of trans-related conditions as mental and behavioral disorders is a major step towards full respect for human rights connected to gender identity and diversity”<sup>5</sup>.
24. For years, mental health diagnoses have been misused to pathologize identities and other diversities. However, in 2019, the World Health Assembly adopted the eleventh revision of the International Classification of Diseases (ICD-11), which removed trans-related categories from the chapter on mental and behavioral disorders. The revision depathologizes trans identities and has been considered by the UN Independent Expert as an important step forward to ensure trans persons can live free from violence and discrimination<sup>6</sup>.
25. Thus, UN experts have recognized that the misperception of some forms of sexual orientation or gender identity as pathologies has deep impact on public policy, legislation, and jurisprudence, penetrating all realms of State action around the world and permeating the collective conscience. They noted that pathologization has historically been, and continues to be, one of the root causes of human rights violations against persons who identify as trans or gender-diverse<sup>7</sup>.
26. **In Colombia, despite the fact that since 2019 the World Health Organization determined in the International Classification of Diseases (ICD-11) that gender incongruence was no longer a psychiatric disease but a health condition, the national disease coding systems have not been updated, so trans and gender-diverse persons must go under forced psychiatric diagnosis of "gender dysphoria" in begin any gender affirming care and to have financial coverage from the health insurance system (called *Entidades Administradoras de Plan de Beneficios* or EAPB, in Spanish).**
27. **Due that the state is delayed on the updating of classification codes, trans and gender-diverse persons report to have to undergo unnecessary psychiatric evaluations to avoid denial of procedures and services<sup>6</sup>.** This practice is stigmatizing for trans persons who continue to be considered "sick" due to their gender identity and

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<sup>5</sup> Press Release. UN experts hail move to ‘depathologise’ trans identities. May 29 of 2019;

<sup>6</sup> Independent Expert on Sexual Orientation and Gender Identity. The struggle of trans and gender-diverse persons; UN experts hail move to ‘depathologise’ trans identities. May 29 of 2019

<sup>7</sup> UN experts hail move to ‘depathologise’ trans identities. May 29 of 2019

implies mistreatment and delays in the health system.

28. An example of this longstanding and unnecessary process was reviewed by the Constitutional Court on the Ruling T-236 of 2020, in which the Court studied the case of Nikita, a transman who was required to undergo four psychiatric examinations for gender dysphoria throughout four years without being able to access gender affirming care. All of them concluded the same as the first report: although being assigned as female at birth, Nikita identified consistently as a man and wanted to continue gender affirming procedures.
29. Similarly, trans and gender-diverse people still face efforts to change their gender identity or the so called “conversion therapies”. We will depart from such denomination and on the contrary we will refer to such barbaric practices without euphemism, that is, as Efforts to Change Sexual Orientation, Identity and Gender Expression Change (SOGICE). For, we believe that to refer to "therapies" is to admit that people who have diverse sexual orientation, gender identity and gender expression have some illness or harm that can be corrected or healed.
30. Now, the Efforts to Change Sexual Orientation, Identity and Gender Expression (SOGICE) originated from the stigma and prejudice that led to the restriction of life and the transgression of the human rights of people who had a diverse sexual orientation, identity and gender expression, the stigmas and prejudices established by the cishetero-patriarchal structure were the fuel to put in place abominable and barbaric mechanisms and procedures in order to make those "abnormal" people fit into that culture, all practices had at least three demands: "the demand to become heterosexual, the demand to hide and pretend, and the demand to dissemble."<sup>8</sup>
31. The American Psychiatry Association (APA) has considered that the Efforts to Change Sexual Orientation, Gender Identity or Gender Expression are not effective efforts to change the sexual orientation and gender identity of a person and, on the contrary, they do generate certain risks and damage to the physical and mental health of people who undergo or are taken to this type of spaces against their will<sup>9</sup>. Research in this area and the scientific literature report these damages and have specified that people who have undergone these types of therapies or efforts have experienced the following:

*“(a) decreased self-esteem and authenticity to others; (b) increased self-hatred and negative perceptions of homosexuality; (c) confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, and suicidality; (d) anger at and a sense of betrayal by SOCE providers; (e) an increase in substance abuse and high-risk sexual behaviors; (f) a feeling of being dehumanized and untrue to self; (g) a loss of faith; and (h) a sense of having wasted time and resources.”<sup>10</sup>*

32. Similarly, the APA has found that, for the most part, the people who undergo this type of practices or who are led to them by their families or closest social circle, have been

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<sup>8</sup> ILGA Mundo: Lucas Ramón Mendos, Poniéndole límites al engaño: Un estudio jurídico mundial sobre la regulación legal de las mal llamadas “terapias de conversión” (Ginebra: ILGA Mundo, 2020).

<sup>9</sup> APA. APA RESOLUTION on Gender Identity Change Efforts. February 2021.

<https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf>

<sup>10</sup> APA (2009), “Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation” p. 50.

people with strong religious and conservative beliefs about what they consider should be their sexuality and their bodies, since they resort to this type of practices of a religious nature under the promise of effectiveness of changing their sexual orientation, thoughts or feelings that do not respond to their beliefs.<sup>11</sup> This shows another problem, which is that SOGICE are not limited to the field of health therapies with professionals in these areas, but also transcend to religious practices that generate the same damage to people who undergo or enter this type of program.

33. In Colombia, SOGICE is still a pending issue to be resolved because in practice LGBTI people continue to experience or have experienced some kind of efforts to convert them into cisgender-heterosexual people. **A survey conducted by All Out and Revista Volcanicas in order to obtain data and quantitative information from LGBTI people in different areas of Colombia showed that of the 686 LGBT people surveyed, at least 43% stated that someone in their family suggested that they take them to some type of treatment to fix them;** more than a quarter of the people have heard from health professionals, both physical and mental, that being LGBT is equivalent to an illness; 30% stated that an authority figure (religious leader, spiritual guide, life coach, church parent) in their community invited them to attend retreats to change their sexual orientation or gender identity; 23% of respondents stated that they were asked at some point in their life to participate in rituals to "cure" or "out" them of their LGBTI identity and 18% of these people stated that they were ever persuaded, invited or forced to do extensive work to "transform" their gender identity or sexual orientation into one that was not LGBT.<sup>12</sup>
34. Thus, it is evident that the problem of this type of efforts is still in force and since 2022 work has been done on the current bill called "Inconvertibles" which proposes to punish this type of instruments from the criminalization and punitive aggravation of crimes such as torture as a form of social sanction to those who profit from or seek to "correct" LGBTI people. Although, from a legal point of view, the fact of subjecting people to inhuman or cruel acts may constitute the criminal type of torture, what the current bill proposes is to create a punitive aggravation of this crime when the victims of the crime are for reasons of SOGICE.<sup>13</sup>

#### Recommendations:

- Review Colombia's medical classifications based on ICD-11 in an urgent manner to eliminate forced or mandatory psychiatric evaluations for trans and gender-diverse persons, establishing the provision of gender-affirming care as a healthcare system obligation not dependent on a psychiatric diagnosis.
- **Take legal and regulatory measures and other strong actions to end discrimination in the healthcare system against trans and gender-diverse**

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<sup>11</sup>Rodríguez Silva, Sindy Paola (2022), *Reemplazaron nuestras plumas por alitas rotas: las "terapias de conversión" en personas LGBTIQ+ en Colombia*, Facultad de Ciencias Sociales, Universidad de Los Andes: <https://repositorio.uniandes.edu.co/bitstream/handle/1992/63591/Reemplazaron%20nuestras%20plumas%20por%20alitas%20rotas-%20las%20terapias%20de%20conversio%C2%BFn%20en%20personas%20LGBTIQ%2B%20en%20Colombia%20.pdf?sequence=3&isAllowed=y>, p. 57.

<sup>12</sup> Survey "¿Qué es ser LGBT+ en Colombia?" made by All Out, Revista Volcánicas y red de organizaciones aliadas. Tomado del documento presentado en el evento "Hablemos sobre el proyecto de ley Inconvertibles" llevado a cabo en el Salón de la Constitución Congreso de la República el 23 de marzo de 2023. Ponencia presentada por: Andrés Forero. <https://campaigns.allout.org/es/colombia-conversion-therapy>

<sup>13</sup> To see the bill proposed: <https://www.camara.gov.co/inconvertibles>



**persons, including the elimination of involuntary treatment, forced or otherwise involuntary psychiatric evaluations.**