

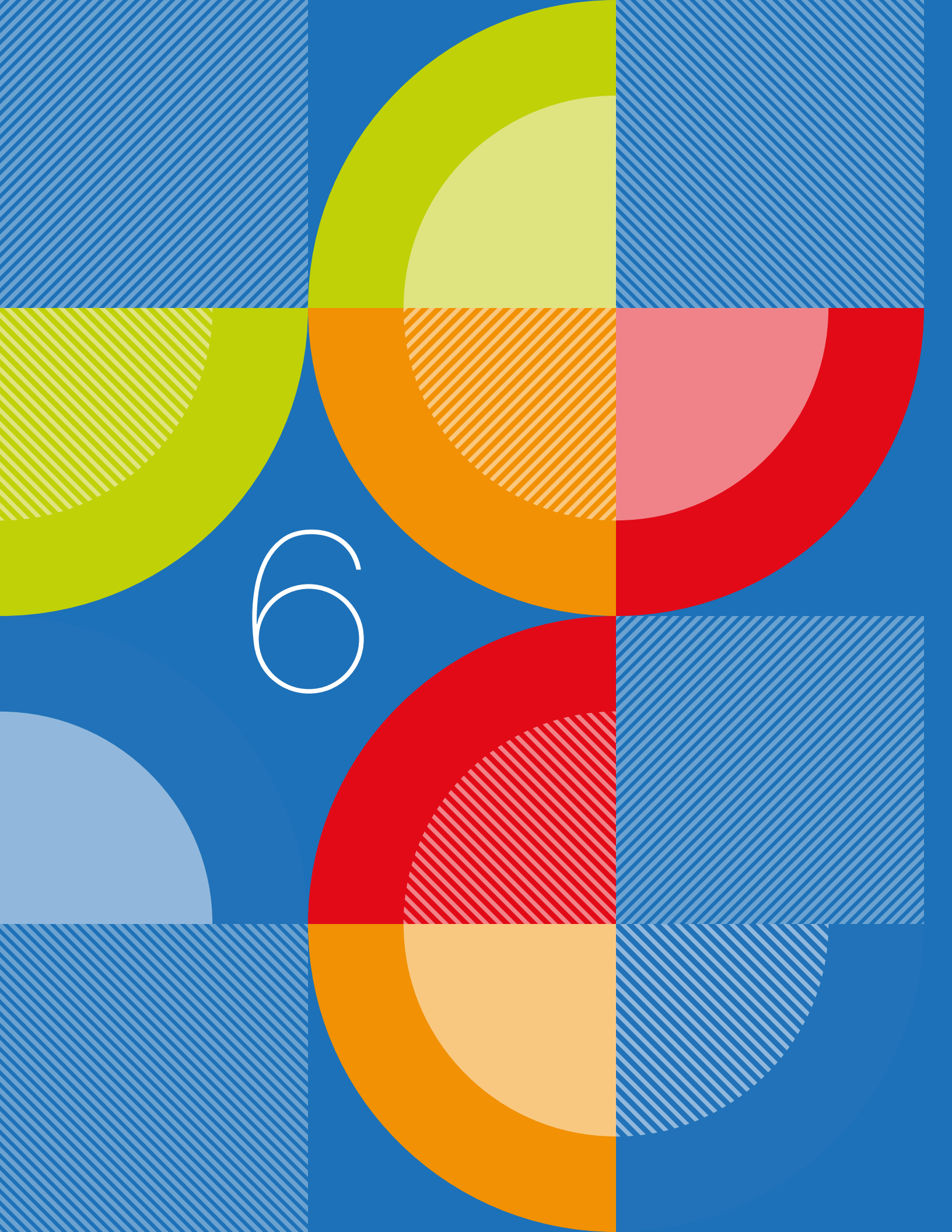
RIGHTS at RISK

Time for Action

Observatory on the Universality of Rights Trends Report
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Chapter 6: Anti-Rights Trends in Regional Human Rights Systems

Silencing Feminists in the African Human Rights System

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Coalition of African Lesbians

Introduction

Over the past decade, the Coalition of African Lesbians (CAL) has been working at the African Commission on Human and Peoples' Rights (ACHPR) with a view to being granted observer status at the Commission.⁷⁶⁶ The significance of this status was in its legitimization of CAL's work at ACHPR sessions. It constituted a giant leap forward for human rights advocacy in Africa.

CAL's observer status indicated that there was a recognition within the Commission that sexuality and gender should not be excluded from human rights advocacy on the continent. It meant that CAL could engage the Commission as a recognized NGO and speak in its own name. For CAL, the status signified a hitherto absent recognition by the Commission of the humanity of African lesbians.

Being granted observer status was a result of years of advocacy by CAL and partners: African Men for Sexual Health and Rights (AMShR),⁷⁶⁷ Initiative for Strategic Litigation in Africa (ISLA)⁷⁶⁸ and Heartland Alliance (the key actors now work as Synergia).⁷⁶⁹ The campaign began in 2010 when CAL's application (made in 2008) for observer status was rejected on the grounds that: "the activities of the said

organization do not promote and protect any of the rights enshrined in the African Charter [on Human and Peoples' Rights]."

It was only in 2015 that CAL was granted observer status, after having re-applied in 2014. In the five years in between the rejection and re-application, CAL and her partners launched a report titled: *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*⁷⁷⁰ (2013) at the ACHPR in which a series of recommendations were made to the Commission and AU member states. Some of the notable recommendations made included urging the African Commission and AU member states to:

- Adopt a resolution condemning the ongoing violence against persons based on their sexual orientation and gender identity. Additionally, the Commission should work with various human rights bodies such as the UN special rapporteurs and reporting mechanisms, international and national human rights organizations working in the area of protecting LGBT rights to hold governments to account through its state reporting and other mechanisms.
- Criminalize, in particular, hate speech and practices that promote discrimination and violence based on Sexual Orientation and Gender Identity (SOGI), as well as use hate speech laws to investigate and

prosecute those who incite violence based on SOGI through their speech.

- Fight impunity for violence based on SOGI perpetrated by state and non-state actors.

In 2014, the African Commission on Human and Peoples' Rights (ACHPR), at its 55th Ordinary Session, adopted a resolution on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (also referred to as Resolution 275).⁷⁷¹ Even with the Resolution's narrowness,⁷⁷² this was a historic, ground-breaking moment which indicated a significant shift in the Commission's position on LGBT rights. It moved from silence and complicity in the anti-homosexuality laws being passed and the violence against sexually non-conforming people, to a recognition that exclusion and violence against LGBT people is contrary to the principles of the African Charter.⁷⁷³

However, the limits of this progressive stance were tested a year later when, within a three-month period, the Coalition of African Lesbians was granted observer status and the African Union's Executive Council then insisted that it be rescinded. Like other human rights-related institutions before it, the African Commission found itself grappling with the power of African Union member states.

Background

The Coalition of African Lesbians (CAL) was established as a feminist space for lesbian women in Africa to organize and to raise our voices and visibility in the lesbian, gay, bisexual and intersex communities as well as within women's and sexual and reproductive rights movements. The deliberate blindness of African civil institutions and societies to the notion of lesbians as a part of African cultures led to CAL choosing to openly name itself as lesbian from the outset.

CAL's core political commitment is to positioning African lesbian feminist thought in local, regional, and transnational spaces in which the narratives of identity, tradition, protection, and morality are contentious. However, CAL is also aware of and concerned by the ways in which identity, tradition, and morality narratives overlap with neoliberal visions that delink gender and sexuality politics from broader social justice perspectives. It is for this reason that CAL structures its work in recognition of the existence of several ways through which oppression is expressed, and that these ways manifest in various forms of patriarchy and capitalism. While CAL's work is largely on sexuality and feminist activism, specifically focused on the bodily autonomy and freedom of African women, it does its work from the understanding and continuous exploration of the interaction and multiplicity of systems of oppression.⁷⁷⁴

CAL's work is shaped by a dynamic understanding of feminism which condemns, makes visible, and challenges the oppression of people on the basis of race, sex, disability, age, gender, and sexual orientation and expression. It also challenges oppressive power that excludes people on social, political, and economic grounds. CAL is committed to raising the consciousness and strengthening the activism and leadership of feminist lesbian women on issues of sexuality and gender.⁷⁷⁵

An important component of CAL's advocacy work is regional. This includes working with the African Commission on Human and Peoples' Rights (ACHPR). CAL also works with member and partner organizations based in Western, Southern and Eastern Africa. These groups inform parts of the work CAL does. Some of the thematic areas within women's bodily autonomy which CAL has engaged in at regional and international human rights advocacy platforms include sex work, sexual and reproductive health and rights – specifically abortion – and the protection of women human rights defenders, among others.

The African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights is one part of the African regional human rights system, with the other parts being the African Committee of Experts on the Rights and Welfare of the Child, and the African Court on Human and Peoples' Rights. The commission is a quasi-judicial treaty monitoring body provided for in Article 30 of the African Charter on Human and Peoples' Rights, often referred to as the Banjul Charter.⁷⁷⁶

In theory, the African Commission is responsible for the protection⁷⁷⁷ and promotion⁷⁷⁸ of human and peoples' rights in Africa. This entails monitoring state implementation⁷⁷⁹ of the rights and duties in the Banjul Charter, as well as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, often referred to as the Maputo Protocol.⁷⁸⁰ The Commission is meant to have an interpretive mandate to grow African human rights jurisprudence⁷⁸¹ through General Comments, of which it has produced four thus far, and resolutions (over 400).⁷⁸²

The commission also receives communications from aggrieved parties against their states, and from state parties to the charter, if they have good reason for believing another state has violated the charter, and as long as all domestic remedies have been exhausted.⁷⁸³ The requirement

that all domestic remedies be exhausted⁷⁸⁴ is fairly standard for judicial and quasi-judicial bodies under international law.⁷⁸⁵ However, it is burdensome in the case of individual or NGO communications and can only be waived if it is "obvious" to the commission that this procedure is "unduly prolonged."⁷⁸⁶ In ideal contexts this requirement is a mechanism for appeasing state parties to treaties by recognizing their sovereignty as the primary adjudicator of *all* municipal disputes. It is also aimed at ensuring that courts and quasi-judicial bodies are not inundated with cases and communications that competent domestic courts could have addressed. In less than ideal contexts where the judiciary lacks independence or where domestic jurisprudence already has an established position (settled law) on particular legal questions and the higher benches are uninterested in hearing the legal or substantive arguments being led by a particular petitioner, a case can be suppressed in the lower courts.

In cases of communications in relation to a series of "serious or massive"⁷⁸⁷ violations of human and peoples' rights, the Commission has an obligation to draw the attention of the Assembly of the African Union to the violation. It may also be mandated by the Assembly of Heads of States and Government to undertake an in-depth investigation into the violations,⁷⁸⁸ culminating in a report of findings and recommendations. It is unclear how the communications procedure is meant to function when a complaint about conduct that may be contrary to the spirit

and provisions not only of the Banjul Charter and the Maputo Protocol, but possibly of other African Union Treaties with human rights ramifications needs to be made against the Commission itself. Where can the Commission be considered to be domiciled, and what would the applicable national laws be? This question has become increasingly relevant for the Coalition of African Lesbians as she explores her legal options in terms of fighting back against the infringement on the Commission's independence, and the institution's seeming reluctance to defend all human rights in the face of African Union scrutiny.

As per the Banjul Charter, the Commission is permitted to have due regard for other international law instruments – including from the United Nations system – in its work. However, the Commission is often selective in its willingness to engage international law concepts emerging from systems that are not considered to be politically viable in Africa. This includes progressive clusters of sexual rights, progressive interpretations of existing rights or bodies of rights, or the extension of rights to marginalized groups that broader society does not perceive to be vulnerable.

Member states have been known to respond to the progressive elaboration of international human rights norms with accusations that those providing such elaboration are attempting to impose “new rights”⁷⁸⁹ beyond the scope of what is agreed in binding international human rights treaties. This

tactic of continually and overtly rejecting the progressive interpretation of certain rights is also linked to sovereign states attempting to position themselves as persistent objectors in case certain human rights norms acquire the status of customary international law. The international law position on customary human rights norms is often murky, leading to contestations and accusations of neocolonialism and the imposition of foreign norms. If certain states are known to be persistent objectors, then the customary norm would be deemed not to apply to them.

The commissioners are legal experts nominated by their respective states, in line with each country's foreign policy. Their work involves interacting with the diplomatic corps of Africa. At the intersections of international law and international relations, Commissioners must be aware of the delicate balance they must strike in discharging their obligation to promote and protect human rights on the continent. Their intimate knowledge of the potentially hostile climate in which they work is evident in how inconsistently the commissioners handle different issues such as militarism and abortion. In order to get work done, it would appear that they prefer the path of fractured friction, where member states are not able to form a bloc or hold a shared opinion. This approach allows the Commission to speak about specific violations in a handful of contexts where member states are generally amenable to commissioners' positions or could be lobbied.

That is not to imply that the Commission has shied away from thorny issues or issues of women's and sexual rights altogether. The Commission has consistently highlighted, through resolutions and concluding remarks, issues of sexual violence in contexts of conflict or instability, such as in Egypt during the Arab Spring. It has also confronted issues of extractivism and environmental degradation when it instructed the Nigerian government to compensate the Ogoni people for the destruction of their native wetlands. Further, it has consistently recognized the right to development and protected the land rights of Indigenous peoples, such as in Kenya.⁷⁹⁰ The Commission passed the narrowly-worded Resolution 275: *Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation and gender identity* which was meant to act as an entry point to further women's and sexual rights advocacy.

Indeed, Resolution 275 created an opening that allowed for the Coalition of African Lesbians to resubmit her application for observer status. However, as the political climate has shifted and commissioners have changed, CAL has noted that the Commission now views advocating for women's and sexual rights – and for the right of women's and sexual rights advocates to political participation – as jeopardizing their ability to deal with supposed “real rights” and the “bread and butter issues” of Africa.

This is in spite of the powerful anti-rights precedent such an approach sets.

The Commission consists of 11 commissioners⁷⁹¹ who are elected by secret ballot⁷⁹² by the Assembly of Heads of States and Governments, an organ of the African Union, from a list of persons nominated by state parties.⁷⁹³ The ability of states to help determine the makeup of the Commission is important in order to address the demand that supranational human rights institutions recognize and respect the sovereignty of member states and to avoid the Commission being used for others' foreign policy objectives. The limitations on over-representation of nationalities in the provisions, and care for regional composition in practice, is meant to ensure impartiality and provide a means of managing state interference.

The Commission is required to continuously report on its activities to the Assembly of Heads of States and Governments at their ordinary sessions. The report on its activities can only be published by the chairman after it has been “considered”⁷⁹⁴ by the Assembly of Heads of State and Government. It is unclear what was intended by this provision, but in practice it has meant that the Assembly has been able to stall on the adoption of a given report and subject the Commission and its commissioners to a significant amount of diplomatic pressure from states.

At best, this has meant that reports have been issued with state addendums indicating that they disavow aspects of the report. This requirement to consider reports prior to their being published has been used by Member States who wish to intervene in the Commission's discharge of its work.

The provision was the subject of an advisory opinion requested at the African Court by the Coalition of African Lesbians and the Centre for Human Rights, University of Pretoria. The case was not substantively heard due to a decision that the applying parties lacked legal standing, right, and capacity to start legal processes as a valid legal actor. However, this remains a key issue in terms of ensuring the independence of the Commission and transparency in its interactions with all the political bodies of the African Union.

CAL's Observer Status, Decision 1015, and the Problem of Independence

CAL has worked at the African Commission for over a decade, and first applied for observer status in 2008. What should have been a mere procedural process was dragged out over two years before the African Commission rejected the application in 2010. After this initial rejection, CAL launched a continent-wide campaign to have the institution reconsider its position. This period also saw extensive collaboration at different times with a loose collective of organizations all working on women's or sexual rights at the African Commission under the banner of

Collective of African Sexuality Rights Related Advocates (CASRA).⁷⁹⁵

IN JUNE 2015, THE EXECUTIVE COUNCIL ISSUED A DECISION ASKING THE AFRICAN COMMISSION TO WITHDRAW THE OBSERVER STATUS GRANTED TO CAL, IN LINE WITH "FUNDAMENTAL AFRICAN VALUES"

In April 2014, the Coalition of African Lesbians (CAL) and African Men for Sexual Health and Rights (AMShER) published their report: *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, at the ACHPR. The report included a number of recommendations for the African Commission and AU member states. That same session, Resolution 275,⁷⁹⁶ referred to above, was adopted by the Commission. There appeared to be a progressive shift in the constitution of the Commission leading CAL to reapply for observer status in August of that year. This time the application was successful, with CAL being awarded observer status in a public vote of commissioners at the April 2015 session. However, a number of virulently sexist and homophobic sentiments were shared by some of the commissioners, with others claiming that non-cisgender and non-heterosexual people are a "Western virus."⁷⁹⁷ Nonetheless, the vote itself was close (5-4 in favour, with one abstention).

The celebration was to be short lived. At the 25th AU Summit in June 2015, following the

Consideration of the Commission's report, the Executive Council issued decision 887⁷⁹⁸ asking that the African Commission: "take into account the fundamental African values, identity and good traditions, and to withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values; in this regard, **requests** the ACHPR to review its criteria for granting observer status to NGOs and to withdraw the observer status granted to the Organization called CAL, in line with those African Values."⁷⁹⁹

Concerned not only by the possible loss of observer status but also by the overt interference by African Union organs and member states into the operations of the African Commission, CAL and the Centre for Human Rights, University of Pretoria, approached the African Court for an advisory opinion.

As the African Court had only been approached, and given the case was still to be heard, there was no action on the enforcement of Executive Decision 887. CAL continued to work at the Commission and organize with other women human rights defenders and sexual rights advocates. When, in March 2016, South Africa hosted a regional seminar on *Practical Solutions on Ending Violence and Discrimination against Persons Based on Sexual Orientation and Gender Identity and Expression*, CAL – along with other CASRA members AMSHeR, ISLA and Heartland Alliance (now Synergia) – in partnership

with Pan African International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) hosted a civil society pre-conference. ACHPR commissioners attended the regional seminar and in April 2016 launched their report: *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity – A Joint Dialogue of the African Commission on Human and Peoples' Rights and the United Nations*.⁸⁰⁰

As expected, after their decision in a similar case, the case brought by CAL and the Centre for Human Rights was deemed inadmissible due to similar issues of *locus standi*.⁸⁰¹ Both organizations were deemed not to be "an African Organization recognized by the African Union." At the time, there was an acute awareness within the CAL secretariat of the ramifications of this decision.⁸⁰² It meant severe restrictions on NGOs' access to advisory opinions and the African Court. In addition, the decision was tacit approval – essentially rubber-stamping – for state interference in the African human rights system. There was also concern about what it meant for the African Court to go out of its way to not engage substantively with cases – failing to even provide *obiter dictum* or "comments made in passing" – about how the law could work or be applied in similar cases.

With the African Court declining to take up the matter, the stage was set for another African Union Executive Council intervention – and this came in the form of Decision 1015.⁸⁰³ Under this decision, the African Union

requested that CAL's observer status be withdrawn, in line with previous Executive Council Decisions. The African Commission was quick to comply, and during its 24th extraordinary session (30 July – 8 August 2018), moved to strip CAL of its observer status.

AFRICAN UNION MEMBER STATES USE PROCEDURAL AND ADMINISTRATIVE PROCESSES TO ENSURE PREFERRED RIGHTS DISCOURSES WILL THRIVE WHILE EXCLUDING CIVIL SOCIETY ORGANIZATIONS

When further reasons were requested for the basis of the withdrawal, the Commission merely cited the relevant “Executive Council Decisions.” This made it apparent that there was no clear procedural basis in terms of the African Commission's own processes for the withdrawal. **This was an issue of state interference in the operations of a human rights treaty monitoring body.**

This is not the first time that African Union member states have acted to limit civil society's access to institutions within the continent's regional or sub-regional human rights system. In this instance, the tactic was to use procedural and administrative processes key to the effective running of the African Commission as a treaty monitoring body to ensure that preferred rights discourses would thrive, while excluding civil society organizations that run counter to those member state's political aims.

A related but contentious tactic used in the African Court relates to the procedure that allows individuals, civil society organizations, and NGOs to have direct access to the Court. In 2016, the government of Rwanda withdrew the declaration they had made under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights⁸⁰⁴ that recognized and accepted the competence of the African Court to receive cases from Individuals and NGOs.⁸⁰⁵ The country asserted that the court was being used as a platform and audience for *genocidaires* – and not for the protection of human rights as the state understood them. It was contrary to *their* values.

The government of Rwanda assured the Court of their high esteem for human rights in Africa, a sentiment echoed by the government of Tanzania, when they similarly withdrew their declaration in November 2019. In the official notice of withdrawal, the country attributed the withdrawal to the declaration having been used contrary to the reservations that they had lodged when making it. At the core of these withdrawals is that the two governments found their values at odds with those of the African Court.

Decision 1015 was significant for a number of reasons, including the entrenching of a narrative of “Africanness” and “African values” that is meant to influence approaches to human rights. The African Commission was told by the Executive Council under paragraph 6(i) that:

“...the work of the ACHPR should be aligned with the Constitutive Act, Agenda 2063, African Common Positions, institutional reform of the Union, and decisions of the policy organs taking into consideration the virtues of historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights.” (Emphasis added)⁸⁰⁶

AFRICAN NATION STATES CONTINUOUSLY PRESENT THEMSELVES AS THE SOLE CUSTODIANS OF THE ALLEGED “ESSENCE” OF THEIR MANY PEOPLES, WHO THEY REDUCE TO A TROPE OF “AFRICANNESS”

This clearly indicated a need for human rights organizations to engage with ideas of African values, decolonization, the universality of human rights, and to have a conversation about women’s cultural rights.

African nation states continuously present themselves as the sole custodians of the alleged “essence” of their many peoples, who they reduce to a trope of “Africaness.” This is problematic. Amongst many other issues, African peoples are reduced to a regressive, homogenous blob refracted from the gaze of white supremacy as codified in the civil and customary laws inherited from the days of colonial rule. African states also continuously present themselves as the champions of a

Pan-Africanist and decolonial agenda whilst simultaneously affirming that there is something inherent to Blackness or Africanness that detests collective models of liberation.

The idea of putative “African values” has been wielded continuously with regards to CAL and its observer status, and to issues of sexual and political rights of lesbians in particular. However, the deployment of this language as a means of framing all of the Commission’s work is an immediate red flag.

All women and marginalized groups are put at risk by an African Commission that frames its work in terms of “African values,” as defined by patriarchal member states. This is an ideological battle waged against African women in multiple fora. We feminists may witness a roll back or a stall in the progress of women’s rights protections – particularly around sexual and reproductive rights.

It became important for CAL to think more intensely about broadening and mobilizing African feminist engagement with the developments at the African Commission and building feminist solidarities across movements. The emphasis would be on both the ideas and praxis of Pan-Africanism, Black Liberation, and African Feminism.

In Decision 1015, the Commission is asked to submit revised criteria “...for granting and withdrawing observer status for Non-Governmental Organizations (NGOs), which should be in line with the already existing

criteria on the accreditation of NGOs to the AU, taking into account African values and traditions.”⁸⁰⁷ This is presumably to ensure that the Commission does not then have to engage in a lengthy process to rid itself of those deemed undesirable by member states, as they would not have been admitted in the first place.

DECISION 1015 DISCLOSED THE POLITICAL AND POLICY ORGANS OF THE AFRICAN UNION'S DESIRE TO CONCRETIZE THE AFRICAN COMMISSION'S ANTI-PROGRESSIVE REFORMS

There has been a clear push for the entrenchment of respectability politics at the African Commission under the aegis of advocating for “real” rights and not those perceived as marginal. Indeed, Decision 1015 requests that the Commission “pay attention to all rights *as enshrined in the African Charter*”⁸⁰⁸ with the implication being that they should stop reading in “new rights.” In addition to entrenching and implementing patriarchal norms and political processes, as well as processes of exclusion, Decision 1015 also disclosed the political and policy organs of the African Union’s desire to concretize the African Commission’s anti-progressive reforms.

Through its decision, the African Union purports to limit the independence of the Commission contrary to settled international

law practice on the nature of treaty monitoring bodies. The decision also accuses the African Commission of acting as an appellate body and asserts that it merely has *functional* independence, but that it is not free of the “same organs that created the body.”⁸⁰⁹ The implication is that the Commission needs to learn to toe the party line appropriately.

With this in mind, paragraph 7(i) requesting that states ensure that the Commission be provided with adequate financial and human resources reads a bit like a reminder to the institution of where its bread is buttered. There is also a clear desire to turn the African Commission into a monitoring and evaluation body or “audit mechanism,”⁸¹⁰ an institution designed to do non-binding review processes much like the UN’s Universal Periodic Review, but without the ability to develop general comments, receive communications, or in any way contribute to the development of jurisprudence and the protection of human rights in Africa. This is in line with the ongoing technocracy, which is devoid of progressive political ideology, that is driving the institutional reforms of the African Union. This devalues the political participation and engagement of African peoples as a mechanism for political growth of African nation states into the socially just societies we believe they can be.

Decision 1015 directly challenges the relationship of complementarity that is meant to exist between the African Commission and the African Court, per the Banjul Charter and the African Court Protocol. Indeed, this

relationship of complementarity was retained in the design of the African Court of Justice and Human Rights, which is/was meant to replace the African Court. A request is made in the decision for an “...analytical review of the interpretative mandate of the ACHPR in the light of a similar mandate exercised by the African Court and the potential for conflicting jurisprudence,”⁸¹¹ which builds off the idea that the Commission is acting as an appellate body, indicating a willful misconstruing of the roles of the Commission and the Court.

“African Values”

At the 56th Ordinary Session of the ACHPR, when CAL was granted observer status, Commissioner Mohamed Bechir Khalfallah from Tunisia stated that homosexuality was a “virus” and that it was brought to Africa to divide Africans.⁸¹² In that same year the Executive Council requested the ACHPR take into account fundamental African values, identity, and good traditions and, in doing so, withdraw the observer status of NGOs who may attempt to impose values contrary to “African values.”

NO ONE PERSON OR GROUP OF PEOPLE ARE MANDATED TO DEFINE “TRADITION” OR “CULTURE”

The “African values” argument falls within the broader argument of “un-Africanness,” a feeble normative assertion that is often used in the anti-rights rhetoric to which

many African states subscribe. No one person or group of people are mandated to define “tradition” or “culture.” The creation and imposition of a homogenous collective consensus regarding identity, culture, and tradition in the African Charter by states implies that it is the state that is charged with the moral obligation to enforce the standards of what is traditional, what is cultural, and what “African values” are. Article 17(3) of the African Charter states:

“The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”⁸¹³

This provision does not provide room for a historical analysis of sexual minorities or alternative ethical interpretations of African history and values. Instead, it purports to take a snapshot of what were considered current majoritarian attitudes, and then extrapolate a future from there – a future which assumes a continuing trajectory of the same attitudes holding majority status. This provision, and the Executive Council’s invocation of it, fail to recognize or anticipate the evolution of norms in Africa and a shift in community attitudes, as well as the diversity of attitudes that have always existed. This coincides with the belief that because much of Africa had a patriarchal past, and has a patriarchal present, she must necessarily have a patriarchal future in order to preserve an imagined “Africanness.”

In their invocation of “African values,” the states who have assigned themselves the post of custodians of traditions and values seem to be operating under the assumption – or perhaps hope – that maintaining a rigid sense of understanding of said values by the exclusion of people on the basis of difference and perceived deviance from the norm, maintains or ensures a “moral” society.

CONSERVATIVE INTERPRETATIONS OF THE AFRICAN CHARTER USING A REDUCTIVE RHETORIC OF AFRICAN VALUES AND TRADITIONS MAKE IT INCREASINGLY DIFFICULT TO CHALLENGE TRADITIONS AND VALUES THAT HAVE HISTORICALLY OPPRESSED WOMEN

In protecting and promoting human and peoples’ rights, the African Charter endeavours to take into consideration the virtues of the historic traditions and values of African Civilization. The African Charter also pledges to eradicate all forms of colonialism from Africa. If we do indeed want to decolonize Africa and undo the importance of Western culture and ways of knowing over our own, it is important to prioritize African traditions, values and knowledge systems. However, the employment of “African traditions and values” in the instance of the Executive Council’s decision is for the purpose of curtailing not promoting human rights for African people – erasing the histories, lives, aspirations, desires, and

experiences of African women. It is another attempt to hearken back to a mythological golden age of African Civilization marked by the acceptability of patriarchal hegemony and other related forms of domination.

Parts of the African Charter itself do use the conservative language of mandatory heterosexuality, such as stating that the family shall be the natural unit and basis of society and the custodian or repository of morals and traditional values recognized by the community. While the notion of the African family may have evolved over time, the discourse and actions taken by both the Executive Council and the ACHPR tell us that these changes have not been reflected within human rights mechanisms on the continent.

In its directives for the revocation of CAL’s observer status, the Executive Council highlights a continued view of African women in conservative roles. The Council implies that it is against the idea of women organizing around issues pertinent to us, including but not limited to issues around our agency and autonomy. They are continuing to push the narrative that the subordination of women is necessary and that their bodies and their diverse and overt sexualities are simultaneously disgusting and require external control and commodification.

Conservative human rights mechanisms and interpretations of the African Charter using a reductive rhetoric of African values and traditions make it increasingly difficult

to challenge traditions and values that have historically oppressed women, including the “traditional” notion of womanhood as submissive nurturers and home-makers. This interpretation of African values and traditions discourse effectively means that only a certain kind of woman is deserving of human rights and the protection of human rights mechanisms such as the ACHPR.

Many nation-state human rights’ positions are based on inherited colonial laws.⁸¹⁴ It is detrimental to the struggle for liberation of all black people to create a pseudo-homogeneous identity designed to make the continent easier to govern and control. Sokari Ekine⁸¹⁵ likens this to the colonial project of dividing and subjugating, where the state defines citizens and non-citizens based on inherited colonial laws. When one is not considered a citizen, or in this case, as espousing “African values,” they are then not in a position to demand any rights.⁸¹⁶

But there is no singular African identity with shared “values and culture,” and the desire to create one is anachronistic, ahistorical, and inhumane. It is an imposition of values that are contrary to those held by individual African citizens and their communities. It also conveniently fails to take into account the continent’s differing histories, geopolitical positions and affiliations, and ideologies. We must not construct a culture and tradition that conveniently serves to entrench hierarchies of inequality and domination, enabling patriarchal nation-states to punch downwards

whilst failing to address pressing issues of supremacist, neo-colonial, and neoliberal exploitation. There is no evidence that cleaving to the current generally-accepted “African values” will lead to a better society now or in the future.

A Feminist Analysis of the Withdrawal of CAL’s Observer Status

A growing number of forces are banding together to work against organizations working on women’s rights, sexual rights, and feminist organizing, using anti-rights propagandist approaches and outright authoritarianism. States are aiming towards even more impunity by delegitimizing the work done by feminists through all means at their disposal, including violating and limiting the rights and freedoms of women human rights defenders. By promoting a view of supranational moral laws founded in a homogenized view of Africa, states are attempting to hand themselves a blank cheque that they can impose at will. The African Charter, the African Commission, and the African Court cannot and should not be reduced to a morality police force determining which women are permitted to occupy space and engage in the public political space.

The Executive Council’s decision to withdraw CAL’s observer status is an affront to women’s rights on several counts, but it particularly infringed on our right to organize, our right to assembly, and our right to choose to

engage in political matters affecting African women. The decision shows a complete disregard for women's contribution to the progress of African people within the African human rights system. The decision further illustrates a backlash within the structure of the Commission itself against advancing women's rights and political participation.

The Commission set up the mandate of the Special Rapporteur on the Rights of Women in Africa in 1998 to further the promotion and protection of women's rights on the continent. In their visits to member states over the years, these special rapporteurs have raised concerns on issues such as violence against women, the lack of awareness of discriminatory practices against women, and the slow ratification of the Maputo Protocol (the Protocol on the Rights of Women).⁸¹⁷ In addition, they have conducted several studies aimed at advancing women's rights,⁸¹⁸ developing several guidelines such as those on states reporting under the Maputo Protocol.⁸¹⁹ They have also developed landmark general comments such as General Comment No. 2 on the African Charter's Article 14 (1a, b, c), which emphasizes that states must ensure that women in need of abortion are assured affordable and accessible services, in line with the Maputo Protocol. General Comment No. 2 provided a springboard for the special rapporteur's continent-wide campaign for the decriminalization of abortion in Africa.⁸²⁰ Without looking outwards to audit women's contributions to the ACHPR, it is clear that

within the ACHPR's walls significant work has been done to promote, protect, and advance women's rights, but the Executive Council's decision, in one swoop, undermined all the progress done and took African women back decades.

BY PROMOTING A VIEW OF SUPRANATIONAL MORAL LAWS FOUNDED IN A HOMOGENIZED VIEW OF AFRICA, STATES ARE ATTEMPTING TO HAND THEMSELVES A BLANK CHEQUE THAT THEY CAN IMPOSE AT WILL

Decision 1015 and the mainstreaming of conservative interpretations of African values present a risk to all women's sexual and political rights: they come for the lesbians in the morning, and for those wanting access to comprehensive sexuality education, contraception, and abortion rights at night. They stop lesbians from occupying political space and participating in the process at this session – next session, women human rights defenders in general are barred and told it is “un-African” for women to want to influence processes. This decision and the specious moral and political reasonings underpinning it signal a slippery slope towards a glorified, patriarchal, homogenous past where women's place was to be subordinated by men.

Conclusion

The African Union is deliberately shrinking the space for feminist, Pan-Africanist engagement and now it appears that we have now entered the period of reprisals. Not content with stripping CAL of its observer status in Decision 1015, the Executive Council of the African Union in February of 2020 adopted Decision 1045.⁸²¹ In addition to noting that the Commission finally rescinded CAL's status, it requests that the Commission, "...stop any cooperation with this organization."

It is unclear to us what this means. Does this mean that, unlike other organizations who can attend sessions without observer status we will be barred? Does this mean we will not have the benefits of the visa waiver usually applicable for sessions in the Gambia? Does this mean we can no longer contribute to reports and recommendations? Does this mean we cannot submit communications? It is terrifying – albeit ironic – to think that by being declared *persona non grata* by the African Union's Executive Council, CAL could potentially lose all access to the benefit of a human rights system for advocating for what is considered non-respectable and insufficiently African human rights.

Feminists and women human rights defenders must organize more intensively both domestically and in multilateral spaces on the continent and abroad. We must engage extensively with our countries' foreign policy positions on women's rights. The Africa Group

– particularly those countries with progressive domestic policies – must be lobbied continuously. They must be made aware of the constant oversight by civil society actors and activists, such that it becomes increasingly difficult for states to acquiesce to positions in multilateral spaces that would be contrary to their domestic legislation and constitutions.

CAL, together with partner organizations, came together in 2018 to run a campaign fighting for the independence of the ACHPR. The campaign⁸²² is currently in its formative stages, although several activities by partner organizations are underway. The campaign is founded on the understanding that while the Executive Council's decision directly impacted CAL, it is a clear indication of the continued restrictions on civil society organizations' participation in the Commission. The campaign invites support from other activists and organizations, asking them to:

- Publicly condemn the attempts by the Executive Council to stifle the fundamental ideals of our very existence such as equality, non-discrimination, participation, and representation.
- Ask state representatives to bring a human rights discourse and strong and independent institutions back to the table to help build the Africa we all want.
- Sign on to the statement⁸²³ to present a united front of CSOs and NGOs organizing to protect and preserve an independent ACHPR.

“We call upon the ACHPR to resist interference and attacks from the AU policy organs, and uphold its independence. We call upon States to speak out and counter the anti-human rights propaganda and the dismantling of the African human rights system. We call upon States to resist efforts from tyrannical and dictatorial regimes to export oppression to the only remaining body that is accessible and has provided hope to Africans over the years. We need you to help us mobilize all Africans to save the ACHPR.”⁸²⁴

Anti-rights Groups in Latin America: Organization of American States (OAS) General Assembly⁸²⁵ and the Inter-American Human Rights System⁸²⁶

– Mirta Moragas Mereles and Gillian Kane
Ipas

Translated from Spanish by Allison Petrozziello

Anti-rights at the OAS General Assembly

The Organization of American States (OAS) is the world's oldest regional body. Today, it includes all 35 independent states in the Americas. The OAS's mandate is to ensure among all members "peace and justice, to promote their solidarity, to strengthen their collaboration."⁸²⁷ Within the OAS, the General Assembly (GA) is its supreme organ, convening all member states and representatives from civil society annually. The GA is a space for states and civil society to dialogue on issues of security, democracy, and human rights. From that dialogue, resolutions are developed and used for regional accountability.

For many years, member states participating in the General Assembly would routinely approve resolutions upholding sexual and reproductive rights without major objections. Indeed, by 2008, the Assembly was a progressive space for forwarding resolutions condemning discrimination on the basis of sexual orientation and gender identity. This was enabled by the vibrant participation of

civil society representatives from the LGBTI, feminist, and women's movements.

However, in 2013 there was a marked shift during the OAS General Assembly in Antigua, Guatemala, when anti-rights groups began arriving en masse. That year, the General Assembly approved the Inter-American Convention Against All Forms of Discrimination and Intolerance⁸²⁸ and the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance.⁸²⁹ Organized and coordinated anti-rights groups worked to block passage of both conventions because they included legal protection for people based on their sexual orientation, gender identity, and expression.

ANTI-RIGHTS GROUPS ARE ALSO USING A SECULAR DISCOURSE TO CREATE DIVERSE CHURCH COALITIONS, IN PARTICULAR BETWEEN CATHOLIC AND EVANGELICAL CHURCHES

While they failed in blocking the two resolutions, they did establish a foothold for their active engagement in future assemblies. Since then, anti-rights groups have increased their coordination while deepening their contacts with member states. With each subsequent General Assembly, anti-rights organizations grew their participation and activism. They also demonstrated a nimbleness in modifying their strategies based on need. Initially they presented themselves as concerned secular

organizations, even though many were backed by the Catholic Church. By 2014, blocks of evangelical groups emerged as the most prominent anti-rights leaders at the GA. This chapter will focus on their work at the OAS from 2018-2019.

Background: Key Opposition Strategies in the Inter-American System

Strategic Secularization and “NGOization”

In recent years, religious anti-rights groups have formed civil society organizations to obfuscate their ties to churches and the religious grounding of their discourse. Juan Marco Vaggione, professor of sociology at University of Córdoba, has developed the idea of “strategic secularism,” that is, the ways in which diverse groups tamp down their religious dogma and usurp secular language to confront feminist, women’s, and LGBTI agendas. This approach considers how the secular and the religious allow two ways of reflecting the same truth and how both seek to impact sexual politics in contemporary democracies.⁸³⁰

In a similar vein, Vaggione uses the term “NGOization” to refer to the process where religious groups form non-governmental organizations in order to represent interests and discourses that go beyond those of a religious nature.⁸³¹ When anti-rights organizations incorporate as NGOs, this has the effect of making an oppressive religious-political agenda seem more palatable, respectable, apolitical, and/or

less threatening. This has enabled them to participate in and influence democratic and human rights spaces.

Anti-rights groups are also using a secular discourse to create diverse church coalitions, in particular between Catholic and evangelical churches. This is particularly clear at the OAS General Assemblies. Hundreds of secular-seeming NGOs, camouflaging their conservative religious agenda,⁸³² have registered to participate – and they are influencing decision-making.

ANTI-RIGHTS GROUPS TO USE THE NGOIZATION STRATEGY TO ENTER ON AN EQUAL FOOTING WITH SOCIAL MOVEMENTS IN INTERNATIONAL AND REGIONAL SPACES

The NGOization strategy presents challenges to progressive civil society organizations; in most Latin American countries, churches hold the same legal status as civil society groups. This allows anti-rights groups to use the NGOization strategy to enter on an equal footing with social movements in international and regional spaces. But they are not equal. In fact, secular social movements are at a disadvantage as they often do not have equal access to resources or political power.

Key Discourses

Evangelical Churches and Secular Discourse

In 2017, evangelical churches, threatened by an overwhelming Catholic presence at the general assemblies, made a strategic decision to increase their participation at the OAS. The results were immediate; by the 2018 General Assembly in Washington D.C., and the 2019 GA in Medellín, Colombia, they were a visible presence.

While evangelical pastors did not hide their religious affiliation, they claimed dual representation by also identifying as part of civil society. As outlined above, presenting as civil society organizations gave the impression these groups were non-religious, “apolitical” participants. Though claiming to speak on behalf of citizens, they represented very narrow (and arguably extreme) political positions that are not representative of the population at large.

Although they ostensibly defend the separation of church and state, their interpretation diverges from the common understanding that religion should not interfere in questions of the state. Instead, their view holds a passive role for government. That is, the state must take a “neutral” position on religion and not implement guardrails for how religion should operate. They further assert that as part of government neutrality, governments cannot incorporate “ideology” into their programming. Evangelical churches

and other ultra-conservative actors have a broad definition of what constitutes ideology. They have deliberately miscategorized gender equality as an “ideology,” so their position is that any government efforts to advance gender equality is “ideological,” and therefore not permissible.

**ANTI-RIGHTS ACTORS HAVE
DELIBERATELY MISCATEGORIZED
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TO ADVANCE GENDER EQUALITY IS
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Secular Discourse Using Pseudo-scientific Arguments

In recent years, anti-rights groups participating in the Inter-American Human Rights System, whether at the OAS General Assembly or the Inter-American Commission of Human Rights, have been advancing a secular discourse based on pseudo-scientific arguments.⁸³³ Anti-rights actors disseminate these ideas in the public space in order to entrench biases and stigma against particular expressions of sexuality and gender. According to José Manuel Morán Faúndes and Vaggione, these discourses create narratives that uphold retrograde ideas about bodies and sexuality. In some cases, the discourse can appear legitimate when it brings in elements from prevailing science on sexuality and gender.

The anti-rights actors' tactical use of pseudo-scientific discourse is most clearly on display during the dialogue between civil society organizations and heads of delegations of OAS member states.⁸³⁴ In 2018, the Coalition for Human Development, coordinated by Human Life International (HLI), a US anti-abortion group that provides training internationally for priests and Catholic laypeople, presented during the dialogue with member states.⁸³⁵ Their statement denied the wealth of scientific research that complicates, disputes, or disproves binary notions of sex and gender and biological essentialism.⁸³⁶ They posited that:

“Respect for the integrity of the human person includes their real biological sex as man or woman, from the first moment of their existence. Science determines this truth. Attempting to ignore this truth is an act of betrayal against the person and society. Justice can only be brought forth within the parameters of reason. It will never be possible to help human beings overcome real discrimination if we act on the basis of propaganda and gender ideology.”⁸³⁷

Co-optation of “Discrimination”

In much the way that anti-rights groups manipulate the understanding of gender,⁸³⁸ they also manipulate the understanding of discrimination. Protection from discrimination is intended to protect minorities, including religious minorities. Evangelical and Catholic churches increasingly claim to suffer “oppression” on the basis that equality and non-discrimination policies violate their religious rights by forcing them to limit their hate speech. They argue that in fact, they are the victims of discrimination.

EVANGELICAL AND CATHOLIC CHURCHES INCREASINGLY CLAIM TO SUFFER “OPPRESSION” ON THE BASIS THAT EQUALITY AND NON-DISCRIMINATION POLICIES VIOLATE THEIR RELIGIOUS RIGHTS BY FORCING THEM TO LIMIT THEIR HATE SPEECH

In the lead-up to the 2018 General Assembly, during the civil society sessions, evangelical Pastor Hugo Méndez⁸³⁹ defended the right of churches to participate by arguing they had been “silenced” and “discriminated against” for being men and women of faith. He insisted that evangelicals do not discriminate and that they recognize individuals' rights and freedom to choose their own behavior. What they reject, he said, is the interference of government and international organizations with the “inalienable right of parents to educate their children” by promoting “gender ideology.”

At the 2019 GA, the Ibero-American Evangelical Congress Coalition sounded a similar note, claiming⁸⁴⁰ that with respect to minorities, “democracy begins by recognizing the differences, and its degree of maturity is shown by how it respects and integrates minorities. Evangelicals know what it means to experience discrimination and want their experience to serve to generate changes in mentalities establishing criteria for tolerance and respect for dissent.”⁸⁴¹

Undermining the Legitimacy of the OAS and Organs of the Inter-American Human Rights System

Anti-rights groups active at the OAS General Assembly are not there to advance the OAS’s human rights agenda. Instead, they use this civil society space to denounce what they term the “excesses” of the two principal entities of the Inter-American System: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR),⁸⁴² and the Inter-American Commission of Women (CIM, in Spanish).⁸⁴³

In 2016-2017 anti-rights groups active in the Inter-American System concentrated their efforts on influencing the Court’s Advisory Opinion OC-24/17 on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples (analyzed in greater detail below). They argued these bodies are “overstepping the bounds” of their mandate, creating unacceptable standards that go beyond the objective and purpose of the binding treaties of the Inter-American Human Rights System.⁸⁴⁴

During the 2019 General Assembly, anti-rights groups raised the issue of OAS corruption. While it is certainly legitimate to call for accountability, the “Self-Determination of Peoples vs. Institutional Corruption” coalition, led by spokesperson Santiago Guevara, said, without evidence, the OAS was corrupt because its officers “use their position to abuse power, privileging their personal goals and interests to steer the course of the agency outside the mandates that were conferred on it.”⁸⁴⁵

ANTI-RIGHTS ACTORS DISTORT THE ISSUE OF CORRUPTION BY USING IDEOLOGICALLY-DRIVEN CLAIMS TO TARGET PROGRESSIVE OFFICIALS AND HOLD BACK HUMAN RIGHTS

Guevara further claimed that the Inter-American Human Rights System is not independent and impartial but rather beholden to countries outside of the Americas. He cited an analysis contributed by Spain to the Inter-American Court of Human Rights on the Advisory Opinion 24/17 on Sexual Orientation and Gender Identity. Guevara charged that this was done “with the objective of imposing ideologies that are foreign to the will of the peoples of the Americas, their culture, and their democracies.” Guevara also attacked the personal interests of the IACHR commissioners and court judges for having “replaced that agreed upon by the states,” making “arbitrary, whimsical, and ideological interpretations.”⁸⁴⁶

There are valid conversations to be had about corruption within the OAS, which undermines the system's ability to uphold rights. But instead of improving the functioning and integrity of the system, these examples show how anti-rights actors distort this issue by using ideologically-driven claims to target progressive officials and hold back human rights. Their idea of corruption is not agreeing with their reactionary ideology.

Attacks and Intimidation of Trans Activists in Bathrooms⁸⁴⁷

One of the most heated topics at the OAS General Assembly has been the creation of gender-neutral bathrooms. This has generated violent reaction from anti-rights groups, some of whom have followed and harassed trans activists for using gender-neutral bathrooms as well as bathrooms that correspond to their gender identity.

Incidents of bathroom violence began in 2016 at the General Assembly in the Dominican Republic and led to the need to station security guards by bathrooms to protect trans activists. By the 2017 General Assembly, the harassment had escalated to the point where the OAS was forced to revise the methodology for civil society participation and develop guidelines directly addressing the issue [emphasis added]:

“Examples of harassment or disrespect include: Offensive comments, verbal threats, intimidation, stalking, harassment through photographs or recording,

disruptive behavior at sessions, events, or inside and outside of the bathrooms and unwanted physical contact.”⁸⁴⁸

Development and Promotion of a Parallel Human Rights Framework

The previous “Rights at Risk” report highlighted how anti-rights groups are promoting language at the UN that validates discriminatory and patriarchal norms and views.⁸⁴⁹ This attempt to reframe human rights standards is also playing out at the OAS.

Anti-rights activists are advancing restrictive interpretations of international standards developed by the Inter-American Human Rights System (IAHRS), while willfully disregarding how these standards have evolved. For example, anti-rights groups argue that Article 4 of the American Convention on Human Rights (ACHR) establishes total protection of life from conception and therefore precludes the decriminalization of abortion.⁸⁵⁰ This interpretation completely ignores that the Inter-American Court later established in its jurisprudence that the protection of the right to life as defined in the convention is not absolute, but that it is “gradual and incremental.”⁸⁵¹

Anti-rights groups are also undermining the legitimacy of the IAHRS. During the 2018 General Assembly, the Coalition on Rule of Law and the Self-Determination of the People criticized the actions of the OAS and Inter-American Human Rights System bodies. While their remarks did not directly mention the Court's Advisory Opinion (AO)

on Sexual Orientation and Gender Identity,⁸⁵² they parroted the same argument put forth since January 2018, when the AO was first made public:

“Under the pretext of defending these fundamental rights, some of the organs of the OAS, such as the Inter-American Commission, the CIM, and the Inter-American Court of Human Rights, have weakened democracy and undermined the principle of nonintervention by issuing decisions and opinions that are not based in law, violating political stability, and above all breaking down the rule of law which should govern both the system and the region.”⁸⁵³

A third pathway to undermine the system is by repeatedly framing the jurisprudence and standards of the Inter-American Human Rights System as “attacks” on national sovereignty that are tantamount to ideological impositions. At the 2018 General Assembly, the Human Rights and Fundamental Liberties in America Coalition expressed concerns about the actions of the Inter-American Commission of Women, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights, as well as CIM and the Inter-American Human Rights System:

“Along these lines, Article 3 establishes as one of its principles, respect for the juridical personality, sovereignty, and independence of states, as well as

compliance with the obligations deriving from treaties and other sources of international law. Therefore, we would like to take this opportunity to express our grave concern regarding what is happening with this organization... Our primary concern is the lack of agreed-upon standards or action within the organs, which continue to distance themselves from the original intent of the treaties agreed upon by member states of this institution, distorting what countries have agreed upon and imposing standards which overstep their own legal framework.

Although we have made progress in terms of Human Rights in the region, it is evident that we suffer serious threats. Paradoxically some of them come from the so-called ‘second generation human rights’, too often ‘ideological inventions’ outside the Universal Charter of Human Rights and the American Convention on Human Rights.”⁸⁵⁴

Essentialism

Anti-rights groups at the OAS are increasingly promoting the position that their work is designed to protect and defend women, which is done by elevating their “true essence.” This rhetoric is rooted in the idea that women and men have “natural” and “complementary” roles in society that should be preserved by state actions. The “complementarity” idea was identified in the previous “Rights at Risk” report as a key anti-rights discourse,⁸⁵⁵ and

noted this construction undermines the right to equality and non-discrimination.

At the 2018 General Assembly, the Coalition for the Safety of Women, represented by the Mexican organization *Corazón Puro* [Pure Heart] and María del Pilar Vazquez Calva, said that “women are taking on greater roles in the economy, without abandoning their nature as mothers.” Regarding women’s essence:

“We recognize the value and dignity of women for humanity and for each country of this continent. Being women, with all of the interpersonal relations that involves, means that women in different ways build coexistence and collaboration between all people, men and women. In this broad and diverse context, the woman has a particular value as a human being while, at the same time, she also has value as a concrete person based on her femininity. This is true for each and every woman, regardless of the cultural context in which she lives.”⁸⁵⁶

In this discourse, a woman’s value is made conditional on her adherence to stereotypically “feminine” roles and behaviour, specifically the role of mother, rather than affirming the universal human rights she is entitled to by merit of simply being human.

Impact of Anti-rights Groups in the 2018 OAS General Assembly

Blocking Language on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in the Resolution on Human Rights

The Inclusion of language on sexual and reproductive rights in resolutions is complex. To date, the success of including LGBTI rights in OAS resolutions rests largely on the work of the LGBTI Coalition, which has been driving the approval of resolutions on the issue since 2008. While the resolutions have met with resistance from a few countries, including Paraguay, Guatemala, and some Caribbean countries, they are being approved.

During the 2018 OAS General Assembly, anti-rights organizations reserved most of their energy for blocking the inclusion of language protecting LGBTI rights in the “Promotion and Protection of Human Rights” resolution. The resolution was proposed by Argentina, Brazil, Canada, Colombia, Chile, the United States, Mexico, and Uruguay, and co-sponsored by Costa Rica and Belize. Working with the Paraguayan delegation, anti-rights groups opposed two items: the inclusion of language referring to “sex characteristics” that addressed intersex individuals; and any reference to the Advisory Opinion 24/17 of the IACtHR on Sexual Orientation and Gender Identity. This move was purely *pour la galerie* given that the Advisory Opinion is a judicial document issued by the Inter-American Court and as such, does not require the approval of member states.

Anti-rights groups took a multipronged approach to the fight against the language. They privately lobbied conservative states like Paraguay and some English-speaking Caribbean countries, while the Spanish organization CitizenGo launched an online signature collection campaign for a petition against LGBTI rights.⁸⁵⁷

Anti-rights groups and their allied states succeeded in eliminating language on sex characteristics, as well as mention of the IACTHR Advisory Opinion from the human rights resolution. Guatemala, Jamaica, Barbados, Paraguay, St. Lucia, Suriname, St. Vincent, and the Grenadines included footnotes withdrawing their support from the resolution section addressing LGBTI rights. Paraguay's activism was particularly concerning as throughout negotiations they insisted that "including a footnote would not be enough," and opposed any mention of the Advisory Opinion. This uncompromising position was a major obstacle to the inclusion of more progressive language.

In the Inter-American System, "footnotes" are interpreted as cracks in member state consensus, which is a key mechanism in the approval of instruments. Politically speaking, the more footnotes, the weaker the resolution. Threatening to add a footnote is a strategy that states use (and one that anti-rights activists may suggest to them) to get changes introduced in the text of a resolution. This strategy proved successful in 2018. While the human rights resolution was approved by

the General Assembly without weakening the terms of previously agreed-upon language, it did exclude the additional progressive language on sex characteristics and any mention of the Advisory Opinion.

Eliminating any Mention of Sexual and Reproductive Health in the Resolution on Human Rights

One OAS entity which has been forced to bend to pressure from anti-rights groups is the Inter-American Commission of Women (CIM),⁸⁵⁸ which holds compliance on the follow-up mechanism to the Belém do Pará Convention (MESECVI).⁸⁵⁹ MESECVI is a committee of independent experts who monitor implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. Known as the Convention of Belém do Pará, it was the first regional convention on the eradication of violence against women in the Americas.⁸⁶⁰

THE PHRASE "SEXUAL AND REPRODUCTIVE HEALTH" WAS ELIMINATED. ANTI-RIGHTS GROUPS CLAIMED THIS AS A MAJOR VICTORY

In 2018, a proposal was presented to include a section on sexual and reproductive health within the general resolution on human rights, and to give MESECVI a mandate to follow up. The section was proposed by Argentina, Colombia, Costa Rica, Ecuador, Mexico, Panama, and Peru, and co-sponsored by

El Salvador. The goal was to reaffirm states' commitment to MESECVI's mandate and include explicit references to sexual violence and adolescent pregnancy. The draft resolution requested that the "MESECVI expert committee prepare a practical action guide compiling legislation, good practices, and challenges related to sexual and reproductive health policies that are being implemented in the region on this topic."⁸⁶¹

This paragraph turned out to be quite controversial. Despite some countries' unwavering defense and attempts at consensus-building, through Paraguay's forceful opposition to the language – and the striking silence by more progressive countries – the phrase "sexual and reproductive health" was eliminated. Anti-rights groups claimed this as a major victory.

Anti-rights Groups at the 2019 OAS
General Assembly

Election of IACHR Commissioners

In 2019, the terms of four of the seven members of the Inter-American Commission on Human Rights (IACHR) were renewed. Five candidates vied for the seats. Up for re-election were Commissioners Margarette May Macaulay from Jamaica and Esmeralda Arosemena de Troitiño from Panama. The other candidates were Julissa Mantilla from Peru, renowned expert on women's human rights; Stuardo Ralón from Guatemala; and Everth Bustamante, the candidate from the host country, Colombia.

ANTI-RIGHTS ACTORS WENT AFTER THREE WOMEN CANDIDATES AND ALSO LAUNCHED A CAMPAIGN QUESTIONING A CANDIDATE'S CRITICISM OF ANTI-RIGHTS GROUPS

An independent panel of experts evaluated all five candidates and concluded that only Ralón and Bustamante did not meet the requirement of recognized competence in the field of human rights and were therefore not suited for the position.⁸⁶²

Disregarding the expert evaluation, anti-rights groups went after the three women candidates. They requested that Jamaica withdraw Macaulay's candidacy because of her support for women's and LGBTI rights. They also launched a social media campaign against Esmeralda Arosemena de Troitiño, with the hashtag #EsmeraldaDiscrimina (#EsmeraldaDiscriminates), questioning her criticism of anti-rights groups.

Despite these attacks, both women and Julissa Mantilla were elected. Still, in a worrisome setback, Stuardo Ralón, who is vehemently opposed to reproductive rights,⁸⁶³ was also elected. What made the election particularly remarkable was that the host country's candidate was not elected, which was a significant break from tradition and a rebuke to Colombia.

LGTBI Rights in Resolutions on Human Rights and Hemispheric Security

As with 2018, anti-rights organizations focused on hindering progress on LGBTI rights language in the Resolution on the Promotion and Protection of Human Rights. Led by the Paraguayan delegation, with support from St. Lucia, they opposed two issues: inclusion of language on “sex characteristics,” which aimed to address intersex individuals, and provisions against discrimination based on “real or perceived” sexual orientation and gender identity. Paraguay proposed including a paragraph that would establish states’ sovereignty to not apply those standards in their public policies. Since there were strong positions in favour of including the paragraph, including from member countries of the LGBTI Core Group,⁸⁶⁴ Paraguay proposed putting it to vote. This is almost unprecedented in the OAS where consensus is the predominant decision-making mechanism.

After several informal meetings, the language on sexual characteristics and the paragraph protecting sovereignty were finally incorporated. Guatemala, Paraguay, Saint Lucia, Trinidad and Tobago, Suriname, Saint Vincent and the Grenadines, and Barbados presented footnotes to express their disagreement with the approved proposal. In turn, Jamaica presented a footnote to *the entire* resolution on human rights, noting that sexual orientation, gender identity, and gender are not defined in their national standards.

A second document that became a focus for anti-rights groups was the Draft Resolution Advancing Hemispheric Security: A Multidimensional Approach. A paragraph referencing specific groups affected by violence, including LGBTI people, drew their ire. Again, Paraguay and St. Lucia, with Guatemala’s support, expressed their opposition to this language. In the end, the resolution included mention of LGBTI people, with the caveat that all groups share the same situation of vulnerability to violence. Paraguay, St. Lucia, and Guatemala added footnotes to this paragraph, again to signal their disagreement with the inclusion of any language on LGBTI people at all.

Resolution Chapter on the Right to Freedom of Religion or Belief

The United States under President Trump expanded the promotion of the freedom of religion, not with a lens toward expanding more rights and protections, but rather toward privileging the rights of Christians and protecting them from accountability on the issue of health care provision, LGBTI rights, and sexual and reproductive rights.

A CHAPTER ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF WAS ADDED WITH NO OPPOSITION

In 2019, the US proposed a chapter on the right to freedom of religion or belief for inclusion in the OAS resolution. It was added with no opposition. While sufficiently broad

enough not to elicit objections, it also did not include specific protection for vulnerable populations, girls, women, and LGBTI people. The resolution also requested that the Secretary-General organize, with existing resources, a regional dialogue on the right to freedom of thought and conscience and freedom of religion or worship. The aim is to encourage input from member states, the Inter-American Commission on Human Rights (IACHR), civil society, and other social actors. It also requests that the Committee on Legal and Political Affairs organize, also with existing resources, a special session for member states to share lessons learned and best practices in order to promote the goals of this resolution. The results are to be presented to the permanent council before the 50th regular session of the General Assembly in 2020.

FREEDOM OF RELIGION AND BELIEF IS BEING STRATEGICALLY CO-OPTED AS A COVER FOR ENTRENCHING DISCRIMINATORY NORMS

As has been outlined previously, freedom of religion and belief is being strategically co-opted and misused by state and non-state anti-rights actors as a cover for entrenching discriminatory norms. The inclusion of this chapter for the first time, and the related activities, reflects this broader trend.

Main Anti-rights Groups at the OAS

The OAS has clear guidelines for civil society participation at the General Assembly, including a minimum requirement of 10 legally registered civil society organizations to form a coalition. Coalitions are organized under various themes, for example, human rights or the family. Organizations cannot make individual presentations, which is why there is great importance on the theme and composition of coalitions who must speak on behalf of all their members. Here we outline key organizations leading coalitions organized around anti-rights issues.

Ibero-American Evangelical Congress⁸⁶⁵

The Congreso Iberoamericano por la vida y la familia⁸⁶⁶ (Ibero-American Congress for Life and Family), grew out of the Iniciativa Ciudadana por la Vida y la Familia⁸⁶⁷ (Citizens' Initiative for Life and Family), an evangelical movement that promotes public policies to defend the "rights of families" in Latin America. The Congress first met in Mexico City from 21 to 23 February 2017, and formally became an organization the following February in 2018. At present, it includes representatives from 17 countries in the region.

At the 2018 Second Ibero-American Congress for Life and Family,⁸⁶⁸ evangelical members expressed concern about the number of Catholic groups at the OAS General Assembly, the minimal participation of evangelicals, and the amount of progressive policies adopted by the OAS. It was at this

point they decided to engage more actively in future general assemblies.⁸⁶⁹

In preparation for the 2018 GA in Washington D.C., the Ibero-American Congress organized three coalitions drawn from 38 civil society organizations from six countries. Each coalition was coordinated by a pastor: Argentine pastor Hugo Méndez coordinated the Ibero-American Evangelical Congress coalition; the Brazilian Coalition was led by pastor Glaucio Coraiola; and the Educational and Cultural Coalition for Democracy was coordinated by Gilberto Rocha from Mexico.

By the time of the 2019 GA in Medellín, Colombia,⁸⁷⁰ most anti-rights organizations were affiliated with evangelical churches, making them the largest anti-rights bloc. They initially tried to get into 10 coalitions,⁸⁷¹ but OAS rules for forming coalitions⁸⁷² capped the limit on the number of speakers. In the end they were represented in five coalitions.⁸⁷³

Evangelical coalitions and their spokespersons included: Milagros Aguayo⁸⁷⁴ representing the “Coalition for Progress of Society”; Patricia Cortés⁸⁷⁵ on behalf of the “Education and Culture for Democracy” coalition; Clara Vega de Rocha⁸⁷⁶ for the “Opportunities for Social Order” coalition; the “Building New Horizons” coalition by Silvana Vidal;⁸⁷⁷ and the “Ibero-American Evangelical Congress” coalition, led by spokesperson Marco Aurelio Camargo.

One evangelical coalition that was not a member of the Ibero-American Congress

for Life and Family,⁸⁷⁸ was the “Life and Family” coalition, led by the Paraguayan spokesperson Miguel Ortigoza of the Association of Evangelical Churches of Paraguay. This suggests that not all evangelicals align with the mandate of the Congress.

Alliance Defending Freedom (ADF)

As outlined in earlier chapters, ADF is a US-based legal organization working internationally to develop legal anti-rights arguments for use in litigation, advocacy, and legal training for young lawyers. Their Latin America office is strategically located in Washington D.C., where the Organization of American States is also based.⁸⁷⁹

ADF is active in the Inter-American System, which includes the Inter-American Court and the Inter-American Commission on Human rights. There, they coordinate with like-minded anti-rights groups at the national level. Past activities at the Inter-American Court, where they presented *amici curiae*, include: *Karen Atala and Daughters v. Chile*,⁸⁸⁰ a case on sexual orientation and gender identity; the *Artavia Murillo v. Costa Rica* case on in vitro fertilization and the scope of the American Convention on Human Rights on the right to life,⁸⁸¹ and *Duque v. Colombia* on recognition of the civil union of same-sex couples.⁸⁸²

They recently presented observations on the Inter-American Court of Human Rights’ Advisory Opinion on Sexual Orientation

and Gender Identity, as requested by Costa Rica in terms of the compatibility of some articles of the country's laws regarding sexual orientation and gender identity with the American Convention on Human Rights.⁸⁸³ ADF also submitted an *amicus curiae* in the ongoing case of *Sandra Pavez v. Chile* about discrimination based on sexual orientation.⁸⁸⁴

At the national level, the organization has submitted shadow reports as part of the UN Human Rights Council's Universal Periodic Review (UPR) process as a way of supporting national anti-rights groups in countries including Uruguay,⁸⁸⁵ the Dominican Republic,⁸⁸⁶ and Chile⁸⁸⁷ on issues related to abortion, comprehensive sexual education, and discrimination against LGBTI people – among others. As noted in earlier chapters, this strategy is particularly harmful in countries that have few civil society groups with the funding and time to produce such reports. More about ADF's legal arguments will be developed later in the case study about the Inter-American Court of Human Rights' Advisory Opinion OC-24/17 on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples.

Hazte Oír/CitizenGo

As outlined in Chapter 4, HazteOír (MakeYourselfHeard) is a Spanish organization⁸⁸⁸ founded in 2001 and led by Ignacio Arsuaga to promote "life and human dignity."⁸⁸⁹ Founded over a decade later, in 2012, CitizenGo is the global platform for Hazte Oír's internet activism.

CitizenGo introduced itself to Latin America in June 2017 when it paraded an orange-coloured bus loaded with anti-trans messaging at the OAS General Assembly in Cancun, Mexico.⁸⁹⁰ It included the statement: "Boys have penises, girls have vaginas. Don't let them fool you."⁸⁹¹ The bus originated in Spain, touring various cities, but was eventually taken off the roads after the Madrid City Council, activists, and trade unionists united against it.⁸⁹² Elsewhere in Latin America, the bus toured Chile⁸⁹³ and Colombia.⁸⁹⁴

Frente Joven (FJ)

Frente Joven (Youth Front) describes itself as a "movement of youth seeking to build a better society by promoting and upholding human rights."⁸⁹⁵ This includes youth leadership training⁸⁹⁶ for participation in national and international advocacy efforts. At the international level, FJ spearheaded the creation and maintenance of the Pan-American Youth Forum for youth leaders.⁸⁹⁷ They work in countries like Argentina, where they publicly opposed the legalization of abortion⁸⁹⁸ and protested the sale of the abortion drug, misoprostol, in pharmacies.⁸⁹⁹ Other national projects include "Mama Defenders," which offers support for "pregnant women and children in vulnerable situations."⁹⁰⁰ It is not unusual for anti-rights groups advocating against sexual and reproductive rights to operate national projects supporting "pregnant women and children in vulnerable situations." The support to individual women adds legitimacy

to their political work undermining sexual and reproductive rights of women at large. The FJ is active in Argentina, Ecuador, Peru, and Paraguay.

While their discourse is not always overtly anti-rights – except in national settings – FJ's actions support an anti-rights agenda. At the Inter-American System in particular, they have argued for prioritizing topics other than those related to sexual and reproductive rights.

FJ has access to the highest levels within the OAS. In 2017, they met with OAS Secretary-General Luis Almagro to express “their concern regarding the lack of current public policies for youth and raised issues facing the children of the continent.”⁹⁰¹ That same year FJ participated in the development of the Inter-American Commission on Human Rights' strategic plan. During the discussion they argued that “all human needs should be met, from conception to natural death, such as potable water, nutrition.”⁹⁰² While the statement did not overtly reference abortion, it was a cloaked attempt to cement the anti-abortion stance that life begins at conception. This is a false equivalency between the human rights one is entitled to upon birth and the rights of a fetus from conception. They have also stated that “the family is the point of departure for the cultural revaluing of maternity.”⁹⁰³ This framing does two things, it imposes a positive value on mothers, women, and fertility, while also de-valuing all forms of maternity and parenthood that exist outside of “traditional” family structures.

Case Study: Inter-American Court of Human Rights' Advisory Opinion OC-24/17 on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples:⁹⁰⁴ Repercussions in Costa Rica and the Region

An Advisory Opinion is the mechanism by which the Inter-American Court of Human Rights (IACtHR) reviews the compatibility of states' norms with the American Convention on Human Rights (ACHR). These opinions are particularly important because they come from the official interpretation body of the American Convention on Human Rights.

In May 2016, Costa Rica presented a request for an Advisory Opinion (OC, in Spanish) on the interpretation and scope of Articles 11(2), 18 and 24 of the ACHR, in relation to Article 1 of the same instrument. They requested that the Court provide clarification on:

- The protection and recognition of a change in a person's name in accordance with his or her gender identity
- The compatibility of the existing procedure in the Civil Code of Costa Rica (which states those interested in changing their given name may only do so by resorting to judicial proceedings) with the ACHR
- The recognition of patrimonial rights derived from a relationship between persons of the same sex.⁹⁰⁵

In response, the Inter-American Court opened a consultation process and received observations from various actors on topics related to the Advisory Opinion.⁹⁰⁶ At least eight of the *amici curiae*⁹⁰⁷ submitted were prepared by anti-rights groups, including the US-based organizations the Center for Family and Human Rights (C-FAM) and Alliance Defending Freedom (ADF).⁹⁰⁸ The Court also convened a public hearing on 16 May 2017,⁹⁰⁹ where Jeff Shafer, Neydy Casillas, Natalia Callejas, and Michelle Riestras presented oral arguments on behalf of ADF. C-Fam did not make an oral presentation.

C-Fam's written submission⁹¹⁰ advanced legal and pseudo-scientific arguments. Their central point argued that the Advisory Opinion request was based on the "false" assumption that sexual orientation and gender identity (SOGI) are categories protected against discrimination in the ACHR,⁹¹¹ and that the ACHR does not contain any "special" recognition or protection of patrimonial rights stemming from same-sex relationships. Likewise, they claimed that the ACHR establishes protections for "the family," but not protection for relationships among persons of the same sex which, following their argument, cannot be equated with a family.

C-Fam further claimed that jurisprudence⁹¹² finding sexual orientation and gender identity as categories protected against discrimination was incorrect because it was based on non-binding instruments of the United Nations (UN) system and OAS resolutions. They denied the

validity of the Yogyakarta Principles⁹¹³ as an instrument establishing a solid foundation in international law. They also criticized the use of precedents from other regional mechanisms, such as the European Court of Human Rights, because they were "established with different people, traditions, culture, and values."⁹¹⁴

This is a particularly dishonest criticism. C-Fam and other anti-rights organizations have included in past written submissions appeals to the doctrine of a "margin of appreciation" of the European system to argue that topics such as sexual orientation and gender identity should be legislated at a national level and not subjected to debate in the regional human rights systems. It should be noted that the doctrine of the margin of appreciation does not have the same application or consensus in the Inter-American System as it does in the European System of Human Rights.⁹¹⁵

C-Fam argues there is no consensus among UN member states on the use of the term "sexual orientation and gender identity (SOGI)," and that people "who identify as LGBT have no special additional human rights."⁹¹⁶ Under their interpretation, states "have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual's feelings about their gender identity."⁹¹⁷ C-Fam's faulty reasoning completely obscures the fact that anti-discrimination measures and laws are based on promoting the equality of groups that have been historically discriminated

against precisely because of their identity. It also disregards that non-discrimination is categorized in international law as “*jus cogens*,” i.e., rights that are imperative, that cannot be altered in content.

The second part of C-Fam’s brief promoted pseudo-scientific arguments and used cherry-picked information to reinforce stereotypes and discrimination. For example, they said that: “men who have sex with men are 18 times more likely to contract HIV/AIDS from sexual activity than the overall population;”⁹¹⁸ “homosexual lifestyles are correlated with a host of other sexually transmitted infections (STI) and health risks, including substance abuse and depression;”⁹¹⁹ and “individuals who identify as LGBT are at higher risk of suffering from adverse mental health outcomes.”⁹²⁰ Obscuring the structural drivers of differentiated mental and physical health outcomes of LGBTI people and implying that SOGI itself (rather than marginalization based on SOGI) is the problem, C-Fam argued that “states have the sovereign prerogative to legislate on health and morals to protect their populations from health and moral risks.”⁹²¹

On behalf of ADF, lawyers Neydy Casillas, Michelle Riestra, and Natalia Callejas Aquino argued that the international instruments used by the Inter-American Court to establish sexual orientation and gender identity as protected categories against discrimination were weak.⁹²² They said the number of footnotes (which they incorrectly refer to as “reservations”) in the OAS General

Assembly resolutions on human rights, sexual orientation, and gender identity reflect the lack of consensus in the countries of the region regarding protection against discrimination based on SOGI.⁹²³ For instruments such as the resolutions of the OAS General Assembly, although states and anti-rights organizations tend to use the term “reservation,” in legal terms it does not have the same legal scope as a reservation made by a state to a binding instrument. In any case, the footnotes do reflect the fault lines of political consensus.

ADF repeatedly emphasized the importance of national sovereignty in their submission.⁹²⁴ They maintained that “given the disagreement on an international level, and out of respect for countries’ self-determination, each case should be considered on an individual basis, taking into consideration arguments presented in the case and the cultural identity of states; imposing obligatory norms without exception would violate national sovereignty. Following the criteria of the European Court, states should be given a margin of appreciation to resolve their own cases.”⁹²⁵

In a huge victory for gender rights, Advisory Opinion OC-24/17 was approved in November 2017 and disseminated in January 2018. It establishes standards that favour the legal recognition of gender identity for trans persons, that procedures for changing a name should be as unbureaucratic as possible, and that same-sex marriage should be recognized. According to the Court, offering same-sex couples only a different legal category for

partnership than what is offered to those of different sexes constitutes discrimination.

IN A HUGE VICTORY FOR GENDER RIGHTS, ADVISORY OPINION OC-24/17 WAS APPROVED IN NOVEMBER 2017 AND DISSEMINATED IN JANUARY 2018

The Catholic Church wasted no time reacting, issuing a press release calling the Court's interpretation "abusive."⁹²⁶ A joint statement with the *Alianza Evangélica Costarricense* (Costa Rican Evangelical Alliance), while not directly referencing the Advisory Opinion, reaffirmed that the family "above all international impositions" is made up of a man and a woman.⁹²⁷ A CitizenGo petition said that the Inter-American Court had imposed "gaymonio" on the entire region.⁹²⁸ The campaign collected 65,906 signatures. There were also local objections to the interpretation. A same-sex couple attempting to marry in Costa Rica following the dissemination of the OC, were prevented from doing so by a Notary Council ban on recording gay marriages until local laws are changed.⁹²⁹ The Notary Council is the governmental entity regulating lawyers' activities in the country.⁹³⁰

The Advisory Opinion was issued a month before the Costa Rican presidential elections. This gave anti-rights groups an opportunity to turn marriage equality and recognition of gender identity into key election issues. Presidential candidate and evangelical

preacher Fabricio Alvarado Munoz campaigned on a platform against recognition of gender identity.⁹³¹ He went so far as to propose that Costa Rica leave the Inter-American Human Rights System and that the elections include a "referendum on marriage being only between a man and a woman."⁹³² Munoz won the first round of elections with almost 25 percent of the votes,⁹³³ followed by the centre-left candidate Carlos Alvarado Quesada who received 22 percent of the votes. Without a majority, there was a runoff election. In the second round, Munoz received 39 percent of the votes, with Quesada ultimately winning 60 percent of the votes. This case highlights the ability of anti-rights groups to take advantage of opportunities – in this case, the issuing of the Advisory Opinion – to gain political capital and improve their legal opportunities. At the same time, it demonstrated the ability of progressive society to react to and avert a threat.

Movement Resistance Stories

The LAC LGBTTTI⁹³⁴ Coalition at the OAS

– Alejandra Sardá-Chandiramani
AWID

The LAC LGBTTTI Coalition-OAS was created in 2006 and currently brings together about 60 member organizations. Its founding members were involved in a Working Group that successfully managed to include sexual orientation, gender identity, and gender expression as protected categories in the OAS Convention Against All Forms of Discrimination adopted in 2013, the first regional human rights instrument to do so. The coalition's notable qualities include:

- **Representation:** It includes experienced national and regional organizations from most countries in Latin America and the Caribbean (LAC), with a large non-Spanish speaking Caribbean presence as well as lesbians, bisexuals, gay men, trans and non-binary persons of different ages, HIV-AIDS status and ethnicities.
- **Size and Presence:** The coalition attends all general assemblies and head of states' summits with a delegation of between 20 and 50 activists who are very vocal and determined, and hard to miss!

- **Knowledge and Persistence:** Every year, the coalition meets in advance of the general assembly for training and strategizing among members. Its diversity allows it to speak up not only on "anti-discrimination based on SOGI" but also on youth, family, police brutality, Black, Indigenous, health, education, and many other issues as openly LGBTTTI activists with an intersectional rights-based perspective. Those meetings are open to activists from allied organizations who benefit from the coalition expertise. Throughout the year, the coalition also organizes hearings before the IACHR that force states to discuss with activists issues like economic and social rights for trans populations, LGBTTTI prison inmates, and the criminalization of same-sex relations in Grenada, while joining other NGOs in hearing about the extermination of Black youth in Brazil or what a secular state means for human rights in the region.

These elements combined have made the coalition effective in holding the line on, and even advancing, the rights of LGBTTTI people at the OAS in the face of mounting anti-rights opposition by civil society and states.

Endnotes – Chapter 6: Anti-rights Trends in Regional Human Rights Systems

- 766 “The Commission” refers to the African Commission on Human and Peoples’ Rights.
- 767 African Men for Sexual Health and Rights (AMShEr), *Who We Are*, <https://amsher.org/who-we-are/>
- 768 Initiative for Strategic Litigation in Africa (ISLA), *About Us*, <https://www.the-isla.org/about-us-2/>
- 769 Synergia Initiatives for Human Rights, *Homepage*, <https://synergiahr.org>
- 770 Coalition of African Lesbians (CAL) and African Men for Sexual Health and Rights (AMShEr), *Violence based on perceived or real sexual orientation and gender identity in Africa*, Pretoria University Law Press (PULP) 2013. Available at: <http://www.pulp.up.ac.za/component/edocman/violence-based-on-perceived-or-real-sexual-orientation-and-gender-identity-in-africa>
- 771 The ACHPR Resolution 275 on *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*. Available at: <https://web.archive.org/web/20160304031102/http://www.achpr.org/sessions/55th/resolutions/275/>
- 772 The resolution appears concerned primarily with physical forms of interpersonal violence, and does not cover the full breadth of various forms of violence or more broadly, sexual rights and the rights of people of non-conforming sexualities.
- 773 The Documentary titled “The Commission – From Silence to Resistance” documents the work of activists and organizations pushing for the inclusion of sexual orientation and gender identity and expression at the African Commission on Human and Peoples’ Rights. This documentary can be watched here: <https://www.youtube.com/watch?v=q97-g6PbqJY&feature=youtu.be>
- 774 CAL has adopted a framework of understanding the context in which the organization works called the 5+1 factors, i.e. patriarchy, heteronormativity, militarization, extremism including economic and religious extremism, globalization and the last is environmental degradation. These factors were initially developed by the Women Human Rights Defenders International Coalition. The “+1” is environmental degradation which CAL added to guide its understanding of the context and subsequently the work it both does and aspires to do.
- 775 “...we believe in the importance of women stepping into our power and building our power within and our power with others as part of collective feminist effort and action. This collective power helps sustain our activism and expands the reach and impact of our organizing.” See: CAL, *Why We Exist*, <https://www.cal.org.za/about-us/why-we-exist/>
- 776 African Charter on Human and Peoples’ Rights (Banjul Charter). Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf
- 777 Article 45(2) of the African Charter on Human and Peoples’ Rights
- 778 Article 45(1) of the African Charter on Human and Peoples’ Rights.
- 779 Article 62 of the African Charter on Human and Peoples’ Rights and Article 26 of the Maputo Protocol.
- 780 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women (Maputo Protocol). Available at: https://au.int/sites/default/files/treaties/37077-treaty-0027_-_protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_rights_of_women_in_africa_e.pdf
- 781 Article 45(1)(a) and (3) of the African Charter on Human and Peoples’ Rights
- 782 All theses documents can be found on the ACHPR website’s documentation section, available at: <https://www.achpr.org/documentationcenter>
- 783 Article 50 and 56(5) of the African Charter on Human and Peoples’ Rights
- 784 See for example, article 35(1) of the European Convention on Human Rights; article 46(1)(a) of the American Convention on Human Rights read with article 31(1) of the Inter-American Court of Human Rights’ Rules of Procedure; within the United Nations Human Rights Treaty Monitoring Bodies, see for example the Human Rights Committee’s article 5 (2) (b) of the First Optional Protocol to the International Covenant on Civil and Political Rights
- 785 Some, such as those bodies within the United Nations system, require that petitioners have exhausted available and effective remedies. See Human Rights Committee, *Vicente et al. v. Colombia*, Communication 612/1995, Views of 29 July 1997, U.N. Doc. CCPR/C/60/D/612/1995, para. 5.2
- 786 Article 56(5) of the African Charter on Human and Peoples’ Rights
- 787 Article 58(1) of the African Charter on Human and Peoples’ Rights
- 788 Article 58(2) of the African Charter on Human and Peoples’ Rights. Also, in its investigations the Commission is permitted to decide its own method of investigation as per Article 46.
- 789 A recent example is the speech by Robert Mugabe, former Head of State and Government at the UN General Assembly in 2015. This speech is often mentioned in relation to the “we are not gays” outburst, obscuring the international law and international relations argument that he made. See his original speech here: https://gadebate.un.org/sites/default/files/gastatements/70/70_ZW_en.pdf and a discussion on the outburst here: Max Fisher, *Why Robert Mugabe just shouted “We are not gays” in his UN speech*, Vox, 28 September 2015, <https://www.vox.com/2015/9/28/9411391/why-robert-mugabe-just-shouted-we-are-not-gays-in-his-un-speech>

- 790 *African Commission on Human and Peoples' Rights v The Republic of Kenya*, Application no. 006/2012, African Commission on Human and Peoples' Rights, 27 May 2019. Available at: <http://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples'%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf>
- 791 Article 31 of the African Charter on Human and Peoples' Rights
- 792 Article 33 of the African Charter on Human and Peoples' Rights
- 793 Article 33 of the African Charter on Human and Peoples' Rights
- 794 Article 33 of the African Charter on Human and Peoples' Rights
- 795 CASRA worked together on producing a documentary on the work it did at the ACHPR to get CAL its observer status. The documentary provides further information on the collective and its work.
- 796 The ACHPR Resolution 275 on *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity* <https://web.archive.org/web/20160304031102/http://www.achpr.org/sessions/55th/resolutions/275/>
- 797 See: AWID, *After Years of Activism CAL Attains Observer Status at ACHPR*, Thomas Reuters Foundation News, 29 May 2015, <http://news.trust.org/item/20150529100939-p468k/>
- 798 See: African Union Executive Council Twenty-Seventh Ordinary Session, *Decisions*, 7-12 June 2015, EX.CL/Dec.873-897(XXVII), https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf
- 799 The Socio-Economic Rights and Accountability Project Advisory Opinion (SERAP) case. See paragraph 7, Decision 887, https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf
- 800 Available at: https://www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf
- 801 Meaning legal standing or right and capacity to start legal processes as a valid legal actor.
- 802 CAL, *The African Court denies civil society access to justice and fails to pronounce on the independence of the African Commission on Human and Peoples' Rights*. 28 September 2017. Available at: <http://www.cal.org.za/2017/09/28/the-african-court-denies-civil-society-access-to-justice-and-fails-to-pronounce-on-the-independence-of-the-african-commission-on-human-and-peoples-rights/>
- 803 African Union, *Decision 1015*, 28-29 June 2018. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 804 African Union, *Protocol to the African Charter on Human and Peoples' Rights on the establishment of An African Court on Human and Peoples' Rights*, 1998, https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf
- 805 International Justice Resource Center (IJRC). *Rwanda withdraws access to African court for individuals and NGOs*, 14 March 2016, <https://ijrcenter.org/2016/03/14/rwanda-withdraws-access-to-african-court-for-individuals-and-ngos/>
- 806 The full text of Decision 1015 is available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 807 See paragraph 8(iv), Decision 1015. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 808 See paragraph 8(iii), Decision 1015. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 809 See paragraph 5, Decision 1015. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 810 See paragraph 9, Decision 1015. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 811 See paragraph 7(iii), Decision 1015. Available at: https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- 812 *The Commission: From Silence to Resistance* (2017). Available at: <https://www.youtube.com/watch?v=q97-g6PbqJY&feature=youtu.be>
- 813 *African Charter on Human and Peoples' Rights*, 1986
- 814 C. Lind, "Importing law, politics, and sexuality", in M. Van Zyl & M. Steyn (Eds), *Performing Queer Shaping Sexualities* (pp.1994 -2004), Vol. One, Cape Town: Kwela Books, 2005.
- 815 S. Ekine and H. Abbas (Eds), *Queer African Reader*. Oxford: Pambazuka Press, 2013.
- 816 Varyanne Sika and Awino Okech, *African Sexual Politics: A Pan-African Lesbian Perspective*, Sexuality Policy Watch, 2019. Available at: <https://sxpolitics.org/trendsandtensions/uploads/capitulos/1-african.pdf>
- 817 Ebenezer Durojaye, *The Special Rapporteur on the Rights of Women in Africa (SSRWA) 2007-2015*. (2015). Available at: http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/4035/Durojaye_The-special_2018_.pdf?sequence=3&isAllowed=y
- 818 Reports such as the report of the *Study on the Situation of Women Human Rights Defenders*. Available here: <https://www.peacewomen.org/sites/default/files/Human%20Rights%20Defenders%20in%20Africa.pdf>, the report on the sex specific discriminatory provisions and gaps in terms of gender equality in the national legislation of member states of the Economic Community of West African States (ECOWAS) (available in the Special Rapporteur Activity Report, 2009), among other reports.
- 819 *Guidelines for State Reporting Under the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. Available at: http://www.maputoprotocol.up.ac.za/images/files/documents/state_reporting_guidelines/Guidelines-for-state-reporting-under-the-Protocol-en.pdf

- 820 International Justice Resource Center (IJRC) *African Human Rights Commission Launches Campaign to Decriminalize Abortion*, 2016. Available at: <https://ijrccenter.org/2016/02/02/african-human-rights-commission-launches-campaign-to-decriminalize-abortion/>
- 821 See paragraph 2, Decision EX.CL/Dec.1045(XXXIV)
- 822 The statement can be found on the website of the ACHPR Independence Campaign: <http://independenceachpr.org/sample-page/>
- 823 *ibid*
- 824 In addition to this joint independence campaign, CAL is also developing a feminist ACHPR independence campaign which is focused on women's participation in the ACHPR. CAL plans to work with other feminists and feminist organizations on this campaign when its conceptualization is complete.
- 825 The General Assembly is the supreme organ of the Organization of American States and comprises the delegations of all the member states, which have the right to be represented and to cast one vote. The mechanisms, policies, actions, and mandates of the Organization are determined by the General Assembly. OAS, *OAS General Assembly*, http://www.oas.org/en/about/general_assembly.asp
- 826 The Inter-American Human Rights System is composed of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. It is one of the most progressive regional human rights systems in the world.
- 827 OAS, *Who We Are*, http://www.oas.org/en/about/who_we_are.asp
- 828 The text of the Convention is available online here: http://www.oas.org/en/sla/dil/inter_american_treaties_a-69_discrimination_intolerance.asp
- 829 The text of the Convention is available online here: http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism.asp
- 830 Juan Marco Vaggione, cited by Peñas Defago, María Angélica and Faúndes, José Manuel Morán *New religious/secular configurations: the self-proclaimed "pro-life" NGOs and the disputes on sexual politics in Argentina*. *Religião & Sociedade*, 35(2), 340-362. 2015. <https://dx.doi.org/10.1590/0100-85872015v35n2cap14>, available online: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0100-85872015000200340.
- 831 Juan Marco Vaggione, *Reactive politicization and Religious Dissidence: The Political Mutation of the Religious*. *Social Theory and Practice*, Vol. 31, No. 2: 165-188. 2005. It is worth noting that the meaning here of the term "NGOization" differs from that which emerged from feminist scholarship in the 1990s to describe the boom in NGOs in which much progressive and feminist social movement activism was subsumed into established NGOs and, according to this theory, became depoliticized.
- 832 For example, in the 2017 OAS General Assembly in Cancun, Mexico, out of 300 organizations registered to participate in the civil society days, approximately 100 organizations were from the opposition.
- 833 José Manuel Morán Faúndes and Juan Marco Vaggione, *Ciencia y religión (hétero)sexualizadas: el discurso científico del activismo católico conservador sobre la sexualidad en Argentina y Chile*, *Contemporânea – Revista de Sociologia da UFSCar*, São Carlos, v.2,n.1, 2012, p.169.
- 834 In the OAS General Assembly there is a civil society space prior to the start of the member state meetings, which includes a dialogue with heads of delegation and the Secretary-General. To participate, at least 10 legally registered civil society organizations must form self-managed coalitions.
- 835 For a profile of HLI see: Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, p. 38. Available at: <https://oursplatform.org/wp-content/uploads/Rights-At-Risk-OURs-Trends-Report-2017.pdf>
- 836 See, for example, Hyde, Janet & Bigler, Rebecca & Joel, Daphna & Tate, Charlotte & Anders, Sari. (2018). *The Future of Sex and Gender in Psychology: Five Challenges to the Gender Binary*. *American Psychologist*. 74. 10.1037/amp0000307. The view that humans comprise only two types of beings, women and men, a framework that is sometimes referred to as the "gender binary," played a profound role in shaping the history of psychological science. In recent years, serious challenges to the gender binary have arisen from both academic research and social activism. This review describes five sets of empirical findings, spanning multiple disciplines, that fundamentally undermine the gender binary. These sources of evidence include neuroscience findings that refute sexual dimorphism of the human brain; behavioral neuroendocrinology findings that challenge the notion of genetically fixed, nonoverlapping, sexually dimorphic hormonal systems; psychological findings that highlight the similarities between men and women; psychological research on transgender and nonbinary individuals' identities and experiences; and developmental research suggesting that the tendency to view gender/sex as a meaningful, binary category is culturally determined and malleable. Costs associated with reliance on the gender binary and recommendations for future research, as well as clinical practice, are outlined.
- 837 The presentations are available here: <http://www.oas.org/en/48ga/>
- 838 Anti-rights groups have distorted the concept of gender equality by insisting that gender is an "ideology" and placing it in the same category as religious dogma. This false equivalency has dangerous consequences for the education system. At the 2019 GA, Pastor Gilberto Rocha said that education should be based on scientific evidence and kept free of "subjective ideologies." Ergo, he argued, an education system cannot be designed to strengthen an ideological position such as "gender ideology," as this would go against the separation of church and state. As the section in Chapter 3 elaborates, this is a strategic narrative anti-rights actors use to try to present the defense of rights relating to gender and sexuality as somehow threatening or extreme, in order to defend the "naturalness" of a patriarchal order of power. Rocha added that a secular state must "guarantee the neutrality of the state in matters of conscience, avoid favoring any ideological or religious position, while not infringing upon any one in particular, which would violate individual freedom."
- 839 Video of his remarks are available online here: <http://congresoiberoamericanoportalvidaylafamilia.org/48-asamblea-oea/>

- 840 Remarks available online here:
<http://www.oas.org/es/49ag/docs/presentaciones-coaliciones/Insumos-de-Coalicion-49-Asamblea-General-OEA.pdf>
- 841 Idem.
- 842 The Inter-American Human Rights System, composed of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, is one of the most progressive regional human rights systems in the world.
- 843 The key discourses are described in greater detail below.
- 844 The American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Para,” among others.
- 845 The video of his remarks is available online here: <https://www.facebook.com/watch/?v=319321089020189>
- 846 Guevara claimed: “another example of corruption is the bias and lack of seriousness of some commissioners and judges in the Inter-American human rights system.” He mentioned Esmeralda Arosemena de Troitiño, the Panamanian Commissioner to the Inter-American Commission on Human Rights (IACHR)—and candidate for reelection—noting that she once said the greatest threat to human rights is the presence of conservative and anti-rights groups.
- 847 Gillian Kane, *How can we tolerate anti-LGBTQ rhetoric at a major human rights forum?*, The Guardian, June 2016, <https://www.theguardian.com/global-development/2016/jun/15/anti-lgbtq-rhetoric-organisation-american-states-human-rights-orlando-shooting>
- 848 Forty-Ninth Regular Session of the OAS General Assembly, *Information Bulletin*, June 26-28 2019, <http://www.oas.org/en/49ga/docs/Information-Bulletin-Civil-Society-Social-Actors-ENG2.pdf> Previously, civil society engaged in two forums: an informal debate with the Secretary-General, and a separate dialogue with the heads of state delegations. The new OAS format combined the two dialogues into one single forum. This included requiring that civil society organize itself into thematic coalitions. The self-managed NGO coalitions were given three to five minutes to present to the Secretary-General and member states. While the coalitions helped reduce tensions between groups, it also had the effect of preventing opportunities for debate among organizations. It also reduced opportunities for civil society to engage with the Secretary-General and member states.
- 849 Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, p.95 . Available at: <https://oursplatform.org/wp-content/uploads/Rights-At-Risk-OURs-Trends-Report-2017.pdf>
- 850 Arguments of ADF in the Amicus presented in the case of *Artavia Murillo v. Costa Rica* of the Inter-American Court of Human Rights.
- 851 Inter-American Court of Human Rights. Case of *Artavia Murillo (in vitro fertilization) vs. Costa Rica*. Merits, Reparations and Costs. Judgment of November 28, 2012, paragraph 264.
- 852 Advisory Opinion available online: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf
- 853 The presentations are available here: <http://www.oas.org/en/48ga/>
- 854 The presentations are available here: <http://www.oas.org/en/48ga/>
- 855 Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, p.75 . Available at: <https://oursplatform.org/wp-content/uploads/Rights-At-Risk-OURs-Trends-Report-2017.pdf>
- 856 The presentations are available here: OAS, *48 Regular Session of the OAS General Assembly – 2018*, <http://www.oas.org/en/48ga/>
- 857 The petition is available online: CitizenGO, *Petition to The OAS: No to special LGBT rights while others suffer*, 30 May 2018, <https://www.citizenngo.org/en-us/node/162419>
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- 860 OAS, *Follow-up Mechanism to the Belém do Pará Convention (MESECVI)* <http://www.oas.org/en/mesecvi/convention.asp>
- 861 The draft is available online: <http://www.oas.org/en/48ga/>
- 862 The final report is available online here:
https://www.cejil.org/sites/default/files/informe_panel_2019_final_6_de_junio_de_2019_informe_para_ser_entregado_en_foro_publico.pdf#overlay-context=es/panel-independiente-expertos-evalua-candidatos-cidh-y-recomienda-estados-oea-nominar-personas
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- 866 <http://congresoiberoamericanoporlavidaylafamilia.org/>
- 867 Iniciativa Ciudadana Por La Vida Y La Familia, *Facebook page*,
<https://www.facebook.com/pages/category/Community/Iniciativa-Ciudadana-Por-La-Vida-Y-La-Familia-587061711472996/>
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- 872 Rules available online: *Presentación De Las Actividades Con La Sociedad Civil Y Otros Actores Sociales En El Marco Del 49º Período Ordinario De Sesiones De La Asamblea General De La Organización De Los Estados Americanos* <http://www.oas.org/es/49ag/docs/49AG-OEA-Formato-y-Metodologia-del-Trabajo-en-Coaliciones-de-OSC-ESPANOL.pdf>
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- 874 Video of her remarks available online here: <https://www.youtube.com/watch?v=2eHIMzVjyBw>
- 875 Video of her remarks available online here: <https://www.facebook.com/watch/?v=936211966711198>
- 876 Video of her remarks available online here: <https://www.youtube.com/watch?v=J04nKOchSwQ>
- 877 Video of her remarks available online here: <https://www.youtube.com/watch?v=8-grT7VtHxw&app=desktop>
- 878 Ibero-American Congress for Life and Family, *Homepage*, <http://congresoiberoamericanoportalvidaylafamilia.org/>
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- 905 See full text here: Alliance Defending Freedom (ADF) International, *ante la corte interamericana de derechos humanos*, http://www.corteidh.or.cr/docs/solicitudoc/solicitud_17_05_16_eng.pdf
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- 907 The Latin term *Amicus Curiae*, which literally means “friend of the court” (plural: *amici curiae*), is a document presented by someone who is not a party to a case with the aim of providing specialized information or argumentation in relation to the topic under discussion in the case.
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- 911 C-Fam brief of Amicus Curiae, p. 3. Available online here: http://www.corteidh.or.cr/sitios/observaciones/costaricaoc24/25_center_family_hr.pdf
- 912 See Inter-American Court cases: *Atala Riffo and Daughters vs. Chile* and *Duque vs. Colombia*
- 913 The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity are available online here: <https://yogyakartaprinciples.org/principles-en/>
- 914 C-Fam brief of Amicus Curiae, p. 10.
- 915 For more on the doctrine of margin of appreciation in relation to the principle of equality and non-discrimination, see: Reyes-Torres, Amaury A. *El Principio De Igualdad Y No Discriminación Como Límite Al Margen De Apreciación En El Reconocimiento Del Matrimonio Entre Personas Del Mismo Sexo*. American University International Law Review 29 no. 4 (2014): 761-795, available online: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1822&context=auilr>
- 916 C-Fam brief of Amicus Curiae, pp. 10 and 11.
- 917 *ibid*, p.11
- 918 *ibid*, p.22
- 919 *ibid*, p.22
- 920 *ibid*
- 921 *ibid*, p.21
- 922 Specifically, that the instruments cited in cases like *Atala Riffo and Daughters vs. Chile*, reflect a lack of regional consensus on the protection against discrimination on the basis of SOGI.
- 923 In a strict sense, the term “reservation,” according to the Vienna Convention on the Law of Treaties, is an “unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.” Reservations are acceptable as long as they are not incompatible with the object and purpose of the treaty.
- 924 *ibid*, pp. 10 and 12. Along the same lines, they argued that the issue of patrimonial rights derived from a union among persons of the same sex should be resolved by the legislative branch of each state and that doing so by any other means would “violate national sovereignty.”
- 925 ADF brief of Amicus Curiae, p.6.
- 926 Aciprensa, *Bishops reject imposition of gay agenda by the Inter-American Court in Costa Rica*, 11 January 2018. https://www.aciprensa.com/noticias/obispos-rechazan-imposicion-de-agenda-gay-de-la-corte-interamericana-en-costa-rica-84404?utm_source=boletin&utm_medium=email&utm_campaign=noticias_del_dia
- 927 Nicolas de Cárdenas, *Catholics and evangelicals, united in the face of the imposition of the ‘gaymon’ in Costa Rica*, Actual, 21 January 2018, <https://www.actuall.com/familia/catolicos-y-evangelicos-responden-unidos-a-la-imposicion-del-gaymonio-en-costa-rica/>
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- 933 Enrique Andres Pretel, *Evangelical Christian wins Costa Rica first round vote, faces runoff*, Reuters, 4 February 2018, <https://www.reuters.com/article/us-costarica-election/evangelical-christian-wins-costa-rica-first-round-vote-faces-runoff-idUSKBN1F004W>
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