**QUESTIONNAIRE**

**REPORT ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF TRANS PERSONS IN AMERICAS**

1. **INTRODUCTION**

**The Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (hereinafter the LGBTI Rapporteurship) of the Inter-American Commission on Human Rights (hereinafter IACHR or the Commission) makes the following questionnaire aiming to receive information on the challenges and good practices of the Member States of the Organization of American States (hereinafter OAS) in the recognition and effective guarantees of the economic, social and cultural rights[[1]](#footnote-1) of trans persons[[2]](#footnote-2).**

American Declaration of the Rights and Duties of Man establishes that all human rights are universal, complementary, indivisible and interdependent. The Declaration also stands that all human beings are born free and equal in dignity and rights[[3]](#footnote-3). For its part, the American Convention establishes that “the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights”[[4]](#footnote-4) and it calls on States to "adopt measures, both internally and through international cooperation (…) with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards”[[5]](#footnote-5).

However, as demonstrated in the report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, there is a high prevalence of violence against LGBTI persons in the Americas, and among them, trans people are more susceptible to being subjected to various forms of violence by various factors: exclusion, discrimination and violence in the family, education and society in general; lack of recognition of their gender identity; involvement in occupations that expose them to a higher risk of violence; and high criminalization.

In addition, the IACHR has underlined that in the Americas "trans people face high rates of exclusion from income generation opportunities and social welfare programs that often relegate them to unemployment and It makes them resort to sex work, they face a chronic lack of access to educational and health services, job opportunities and adequate housing, so they suffer from severe impoverishment for most of their lives"[[6]](#footnote-6).

The Commission has also recognized that gender identity - real or perceived - is a constitutive element of a person’s personality. It is vital that States fully recognize gender diversity to guarantee the full exercise of human rights of all people, including trans and non-binary  persons, including protection against violence, and due access to health, education, employment, and housing[[7]](#footnote-7).

In this sense, the Protocol of San Salvador establishes that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights”[[8]](#footnote-8). Moreover, the Yogyakarta Principles developed the idea of the importance of protecting the economic, social and cultural rights of LGBTI persons in the international arena[[9]](#footnote-9). In addition, it is important to remark that the Sustainable Development Goals have highlighted the importance of "leaving no one behind"[[10]](#footnote-10), what is internationally interpreted as a mechanism that includes in the 2030 Agenda the protection of LGBTI[[11]](#footnote-11) persons and their economic, social and cultural rights.

In this regard, the IACHR understands that in order to achieve a comprehensive inclusion of transgender persons in different areas, as well as to reduce the poverty rates that affect them, it is necessary for States to reinforce their efforts in the formulation and implementation of legal frameworks and public policies that guarantee the recognition of the gender identity and gender expression. In addition, it is necessary to implement specific public policies to ensure that trans persons have access, without any discrimination and in safe conditions, to employment and social security, to housing, to education and health, to urgent conditions with the objective of reducing the inequality that affects them and fighting the violence they face.

Based on these considerations and in response to the information presented in the Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the IACHR considers it necessary to prepare a new report on the subject of human rights of trans persons, which seeks to analyze the situation of economic rights, social and cultural rights of these persons in the light of the legislative, political and programmatic actions adopted by the Member States to date.

The report will present recommendations to the States in relation to the integral protection of the trans people their social inclusion and the possibility that they reach a dignified life, free from “fear and want”[[12]](#footnote-12).

The information presented in the report will be based on primary and secondary sources. Regarding the primary sources, the Commission will send this questionnaire to Member States, civil society and specialists in the matter, and will use the information received through the different activities carried out in the fulfilment of its mandate, as by public hearings and working meetings held before the Commission, as well as through the system of cases precautionary and measures, and in other related activities.

Additionally, in relation to secondary sources, the report is based on official public information obtained from institutions of OAS Member State; reports, resolutions and pronouncements of intergovernmental organizations; studies of non-governmental organizations, both national and international; academic research, and information published by the media.

The Inter-American Commission on Human Rights (IACHR) appreciates the financial support provided by the Trust of the Americas, the Arcus Foundation and the Kingdom of the Netherlands. This financial support will allow the preparation and publication of the report.

**2. OBJECTIVES**

This questionnaire seeks to gather information for the preparation of a regional report on the economic, social and cultural rights of trans persons. The questionnaire aims to obtain information from the OAS Member States, from civil society organizations, intergovernmental entities, as well as from anyone interested in sending information about the questions included

**3. INSTRUCTIONS**

1. The questionnaire can be answered partially or totally, depending on the available information;
2. You can submit research, reports, and other documents already prepared and/or published that are relevant to the subject;
3. The 14 questions can be answered with respect to the situation of trans persons depending on the information available or the approach of the work of the OAS Member States, of civil society organizations, intergovernmental entities, as well as of any person who is interested in sending information about the questions included;
4. Please send the answers to the questionnaire before **July 23, 2018**, by email to: cidh\_lgtbi@oas.org . Please indicate as subject in the email: **"Questionnaire about Trans Persons and ESCR - (name of the c*ountry*)"**. Please do not send duplicates. In case it is not possible to send an email, you can also send the questionnaire via fax (+1 202 458 3650), or by postal mail to:

*Rapporteurship on the Rights of Lesbian, Gay, Trans, Bisexual and Intersex Persons*

*Inter- American Commission on Human Rights*

*Organization of American States*

*1889 F Street, NW*

*Washington, D.C.*

*20006*

**4. QUESTIONNAIRE**

It is requested to provide the information that is considered more relevant and/or more significant and/or relevant in relation to each of the points mentioned below.

In order to analyze systematically the information collected, this form consists of 4 sessions that seek to collect relevant information (but not exhaustive) on the following issues: a) General information regarding the economic, social and cultural rights of trans persons and the current legal framework (Session 1); b) Data Collection (Session 2); c) Right to recognition of gender identity (Session 3); d) Specific issues related to Economic, Social and Cultural Rights (Session 4) and; e) intersectionality with other groups (Session 5) .

**I. QUESTIONS**

**SESSION 1 - GENERAL QUESTIONS**

1. Provide all available information about laws, legal frameworks, regulations, guidelines, judicial decisions, projects and public policies that recognize or develop the rights of trans persons in the following areas:

1. Right to education;
2. Right to health;
3. Right to food;
4. Right to work;
5. Right to social security;
6. Right to housing;
7. Cultural rights and;
8. Other economic, social and cultural rights that could be relevant.

2. Identify the major obstacles and challenges in the creation and effective implementation of said laws, legal frameworks, regulations, guidelines, judicial decisions, projects and public policies.

3. Identify forms of discrimination and violence that impede the full exercise of ESCR by trans persons, as well as the ways to accessing justice when they suffer this type of human rights violation.

4. Identify existing indicators and mechanisms designed to monitor and evaluate the above-mentioned advances and challenges.

**SESSION 2 - DATA COLLECTION**

5. Identify policies and practices that exist in your country in regard of the collection of data on the economic, social and cultural rights of trans persons; and, if possible, present the results of these policies and practices.

**SESSION 3 - RIGHT TO GENDER IDENTITY RECOGNITION**

6. Identify and provide information (including statistics, if possible) about laws, legal frameworks, regulations, guidelines, judicial decisions, projects and public policies that guarantee the modification of the name and gender identity in the birth certificate and/or ID cards. Otherwise, identify if there is another form of reaffirmation of gender identity in official documents.

7. Provide information on barriers to access to economic, social and cultural rights related to the lack of recognition of trans persons’ right to identity.

**SESSION 4 - ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

8. Right to Education

1. Provide data on access to formal education by trans persons;
2. Provide data on trans professionals working within the educational system.
3. Provide information about inclusive school curricula to trans persons, especially those that include gender education.

9. Right to health

1. Identify and provide information on the availability, accessibility, acceptability and quality of health systems for trans persons.
2. Provide data on the pathologization or depathologization of gender identities by the health system.

10. Right to work

1. Provide data on the access to formal work of trans persons in the public and private sector, as well as on the existence of laws or public policies that facilitate the right to work for trans persons.
2. Provide information on the participation of trans persons in the informal labor market, as well as on the difficulties to access the formal labor market.

11. Right to social security

1. Identify and provide data on access to the right to social security of trans persons and on those who do not manage to access it.

12. Right to housing

1. Present data on advances and challenges in access and control of the property and economic resources of trans persons. Where they exist, present laws, legal frameworks, regulations, guidelines, judicial decisions, projects and public policies that facilitate the right to housing for transgender people.

13. Cultural rights

1. Provide information on laws, legal frameworks, regulations, guidelines, judicial decisions, projects and public policies that guarantee and protect the cultural rights of trans persons, as well as existing barriers for trans persons to have the opportunity to participate in cultural life.

**SESSION 5 - INTERSECTIONALITY WITH OTHER GROUPS**

14. Provide information on the vulnerability of trans people. In particular:

1. Women;
2. Children and adolescents;
3. Indigenous peoples;
4. Afro-descendants;
5. Human rights defenders;
6. Persons deprived of liberty (in State custody, either in penitentiary systems or in other centers of deprivation of liberty);
7. Migrants, internally displaced persons, refugees, victims of trafficking in persons, asylum-seekers and stateless persons;
8. People living with HIV;
9. People with disabilities;
10. Elderly people.

Please, add any other information and/or documentation that you deem appropriate.

1. For the purposes of this questionnaire, economic, social and cultural rights are considered all the rights enshrined in art. 26 of the American Convention on Human Rights, the rights contained in the Additional Protocol to the American Convention on Human Rights (Pact of San Salvador), as well as the rights enshrined in the International Covenant on Economic, Social and Cultural Rights of the United Nations. [↑](#footnote-ref-1)
2. For the purposes of this questionnaire, trans persons are all persons whose sex assigned at birth does not match their gender identity (including transsexuals, transvestites, two spirits, among others), as well as all persons who identify themselves outside the binary woman/man (IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OAS/ Ser. L/ V/ II.rev.1/ Doc 36, November 12, 2015, paragraphs 20 and 21). [↑](#footnote-ref-2)
3. American Declaration of the Rights and Duties of Man, Preamble. [↑](#footnote-ref-3)
4. American Convention on Human Rights, Preamble. [↑](#footnote-ref-4)
5. American Convention on Human Rights, art. 26. [↑](#footnote-ref-5)
6. IACHR, Poverty and human rights, p. 158 (original in Spanish). [↑](#footnote-ref-6)
7. IACHR, On the occasion of International Transgender Day of Visibility, the IACHR and a UN expert urge States to guarantee the full exercise of the human rights of transgender persons. March 29, 2018. [↑](#footnote-ref-7)
8. Additional Protocol to the American Convention on Human Rights (Pact of San Salvador), preamble. [↑](#footnote-ref-8)
9. Yogyakarta Principles, Principles 12-18, 26, 28, 34, 38. [↑](#footnote-ref-9)
10. UNDP, Sustainable Development Goals, <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html> . [↑](#footnote-ref-10)
11. Stonewall, The Sustainable Development Goals and LGBT Inclusion, ttps://www.stonewall.org.uk/sites/default/files/sdg-guide\_2.pdf. [↑](#footnote-ref-11)
12. American Convention on Human Rights, Preamble. [↑](#footnote-ref-12)