

# The Gap Between Legal Progress and Daily Realities for LGBT People in Latin America

Javier Corrales, Christopher Sabatini | Thursday, Jan. 11, 2018

On Tuesday, the Inter-American Court of Human Rights urged (<https://www.reuters.com/article/us-latinamerica-lgbt/latin-american-human-rights-court-urges-same-sex-marriage-legalization-idUSKBN1EZ020>) Latin American countries to legalize same-sex marriages and unions, responding to a 2016 petition by Costa Rica's president, Luis Guillermo Solís, who has championed gay rights. The decision, one of the most sweeping court statements on same-sex marriage in history, appeared to be the latest sign that Latin America is becoming one of the safest regions in the world for LGBT people, at least legally. Over the past two decades, many countries in the region have seen a revolution (<https://theglobalamericans.org/reports/lgbti-norms-rights-jurisprudence-and-practice-in-the-hemisphere/>) in how the law treats sexual minorities.

Yet despite all the good news on the legal front, there is a stark difference when it comes to the day-to-day realities for many LGBT people in Latin America. Even in the countries that have adopted laws that uphold and respect LGBT rights, societal attitudes remain homophobic, and violence is rampant. In some Latin American countries, a conservative backlash, led by religious groups, is trying to block further change.

This isn't to diminish progress, which has been historic, based on nine basic standards of legal protections—from the legalization of homosexual activity between consenting adults to same-sex marriage, adoption rights, military service and the criminalization of hate crimes against the LGBT community. Most countries in the region today offer at least two of these protections. Some offer all of them.

The standard-bearers are Argentina, Uruguay and Colombia. In 2010, Argentina became just the second country in the Americas, after Canada, and the second in the global south, after South Africa, to legalize same-sex marriage and adoption rights for LGBT people. As in Uruguay, this legal achievement was made through congressional legislation, which gives it a stronger footing than when it occurs by way of judicial rulings, as in Colombia, Brazil and the United States. In 2012, again thanks to congressional legislation,



*LGBT rights activists celebrate a Constitutional Court decision in favor of same-sex marriage, Bogotá, Colombia, April 7, 2016 (AP photo by Fernando Vergara).*

Argentina's government enacted one of the most progressive gender identity laws in the world, establishing public funding for sex reassignment surgery while virtually eliminating the red tape for transgender persons to correct legal documents—such as driver's licenses and birth certificates—to accurately reflect their gender identity.

But legal rights are uneven elsewhere in Latin America. Many countries are failing to make improvements in important legal categories, such as strong protections against hate crimes. These laggards include Paraguay, Peru, Venezuela, the countries of Central America and most English-speaking Caribbean nations.

There is also unevenness across legal categories. In some countries, same-sex marriage and unions are explicitly banned. Protections for transgender people are among the weakest and least common provisions: Only 11 countries in the Americas have developed national laws or regulations to protect transgender individuals. Only eight countries have provisions that allow a person to change their gender identity on national documents without a medical intervention, medical certification or judicial proceeding. In six countries—Costa Rica, Guatemala, Mexico, Peru, the United States and Canada—barriers remain in place for changing gender identity, or the law varies by state or province and there are no federal rules.

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At the regional and multilateral level in Latin America, institutional, normative and legal advances have been significant. Tuesday's court decision comes in the wake of an important evolution in international legal thinking about LGBT issues in the Western Hemisphere. Within the Organization of American States' inter-American system of human rights, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have interpreted the concepts of sexual orientation and gender identity as essential rights to be protected under the categories of "any social condition," protected under Article 1.1 of the Inter-American Convention on Human Rights. And the court has interpreted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which defines "violence against women" as "any act or conduct based on gender," to be applicable to transgender individuals. In 2008, the OAS General Assembly adopted the first of several resolutions on human rights, sexual orientation and gender identity. Later resolutions called on OAS member states to eliminate all forms of discrimination against LGBT individuals, to adopt laws and policies to combat discrimination, to collect data on anti-LGBT violence, and to prevent and investigate anti-LGBT crimes.

But one of the paradoxes of this legal progress is that even in countries where laws respect LGBT rights or are moving in that direction, LGBT people still face harsh living conditions. Why?

First, the vast majority of the public in most Latin America countries is homophobic, as revealed by surveys asking people how tolerant they are of homosexuals or whether they support same-sex marriage. These attitudes are most evident in Central America and the English-speaking Caribbean and, throughout Latin America, among evangelicals, who constitute the fastest-growing demographic group in the region. Evangelicals today account for an estimated 20 percent (<http://www.pewforum.org/2014/11/13/religion-in-latin-america/>) of Latin America's population, and almost 45 percent in some Central American countries.

Second, there is a crime epidemic in many Latin American countries, and LGBT people are especially vulnerable. Some of the highest rates of anti-LGBT violence are in Latin America. Hate crimes occur routinely not only in countries that have few legal protections, but also in countries with well-established ones. In Brazil, according to one estimate (<http://www.pinknews.co.uk/2017/01/28/one-lgbt-person-is-killed-every-25-hours-in-brazil/>), an LGBT person is killed every 25 hours, making it one of the most dangerous countries in the world for LGBT people.

The situation for trans people is particularly dismal. Life expectancy for trans women in Latin America is between 30 and 35 years of age (<http://www.oas.org/en/iachr/reports/pdfs/violence-lgbt-persons.pdf>). According to the organization Transrespect (<http://transrespect.org/wp-content/uploads/2016/11%20/TDoR2016-map.png>), between October 2015 and September 2016, there were 123 murders of transgender and gender-diverse individuals in Brazil, 52 in Mexico, 14 in Venezuela, 14 in Colombia, 10 in Argentina, seven in El Salvador and six in Honduras.

Third, a conservative political backlash is growing. In Brazil, Chile, Colombia, the Dominican Republic, Mexico and Peru, homophobic and transphobic groups—mostly led by Catholic and evangelical leaders—have organized marches since 2015, claiming to uphold “family values” and defend children. Religious groups have challenged efforts to promote sexual tolerance as a type of “ideology of gender” lacking basis in science and therefore not teachable in schools.

In Brazil, evangelicals have established a legislative bloc with more than 90 members, which has stopped most LGBT-oriented legislation. In the Dominican Republic, conservatives conducted a mostly successful effort to shame the former U.S. ambassador, an openly gay man serving with his husband, and they even asked Washington to remove him. In Colombia and Paraguay, conservatives compelled ministries of education not to distribute materials in school teaching about sexual diversity. In Colombia, conservatives who helped defeat a referendum on the peace accord between the government and the FARC guerrillas in 2016 claimed the agreement pushed feminism and LGBT issues too far.

As far as Latin America has come on LGBT rights, there is still a troubling gap between the law and these popular attitudes. For changes in the law to actually start changing minds, governments should offer more training for civil servants, more outreach to the private sector to promote diversity, and more education to help younger generations keep homophobia at bay—all while defending the new legal rights from potential pushback and lingering conservatism.

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