

REPORT BY THE PUBLIC PROSECUTOR'S OFFICE FOR THE UNITED NATIONS' INDEPENDENT EXPERT ON SEXUAL ORIENTATION AND GENDER IDENTITY

Institutional policies regarding sexual orientation and gender identity

I. Introduction

This document has been prepared for the United Nations Independent Expert on sexual orientation and gender identity, Mr. Vitit Muntarbhorn, so as to inform him on the main institutional policies implemented in recent years by the Public Prosecutor's Office concerning promotion and protection of human rights, in particular to address discrimination and violence based on sexual orientation and gender identity.

These initiatives respond to the legal and constitutional mandate assigned to the Public Prosecutor's Office so as to defend human rights. In this sense, one of the priorities of the current Public Prosecutor's Office has been to give this organism a leading role in the promotion of justice for the protection of fundamental rights, in both criminal and non-criminal matters.

One of the aspects of this organism's criminal policy is the prosecution of violence based on gender and sexual orientation. Thus, it has been its priority to advance towards the optimization of efficient investigations of these cases. To this end, highly specialized structures have been created in recent years so as to fulfill the state's commitments regarding prevention, punishment and eradication of violence based on sexual orientation and gender identity. Hence, the principles and standards of the international human rights law were used as a legal and conceptual guide for each of the measures and reforms undertaken.

Therefore this document comprises a synthesis of the functions and competencies of the areas of the Public Prosecutor's Office devoted to addressing the issue of discrimination and violence based on sexual orientation and gender identity, provides an account of a legal pronouncement of the organism before the Supreme Court of Justice and describes a series of institutional and criminal policy reports which have been attached (in Spanish).

II. Public Prosecutor's Office's specialized structures to deal with discrimination and violence based on sexual orientation and gender identity

In recent years, a thorough process of institutional reform of the Public Prosecutor's Office has been promoted, which included the creation of new structures and units –prosecution offices, prosecution units, departments, programs and district attorneys' offices– whose purpose was to strengthen the role of the agency in the fight against organized crime, in the federalization of criminal policy, in the universalization of access to justice and in the respect of human rights.

The Public Prosecutor's Office's new structures with competence in prevention and prosecution of discrimination and violence based on sexual orientation and gender identity are described below. It is important to note that most of them were incorporated by the new Organic Law of the Public Prosecutor Office (n ° 27,148) sanctioned in June of 2015.

✓ **Prosecution Unit Specialized in Violence against Women and gay, lesbian, bisexuals, transgender and intersex persons (Unidad Fiscal Especializada en Violencia contra las Mujeres y personas lesbianas, gays, bisexuales, travestis, transgénero, transexuales e intersexuales / UFEM).**

It was created in 2015 with the general mission of reinforcing the work of prosecutors on cases related to gender-based violence, and ensuring the agency's accordance with the international commitments assumed by the State. UFEM deals primarily with cases of violent deaths of women, girls and boys based on gender; hate crimes based on gender, sex orientation and gender identity –including those attempted–; and aggravated sexual abuse of persons over the age of 13. UFEM also receives criminal complaints for violence against LGBT people. The Unit is organized in three areas: the Strategic Litigation Area, the Criminal Policy Area and the Criminal Analysis and Planning Area. See specially the report on the intervention in the case of the death of the transgender activist, Diana Sacayán.

✓ **Prosecutor Office for Trafficking and Exploitation of Persons (Procuraduría de Trata y Explotación de Personas / PROTEX).** It is mandated to assist in the design of the agency's criminal policy regarding this subject and to provide support to prosecutors throughout the country in the prosecution of cases concerning kidnapping through extortion, trafficking persons, exploitation of persons and related offenses, including trafficking for sexual exploitation, which particularly affects women. This Office has replaced the Unit for Support on Kidnapping through Extortion and Trafficking in Persons (Unidad de Asistencia en Secuestros Extorsivos y Trata de Personas / UFASE), created some years before, enhancing its structure and maintaining its main jurisdictions.

✓ **Department of Gender Policies (Dirección General de Políticas de Género / DGPG).** Created in 2012 in order to incorporate the gender-based perspective into the organization's policies. The DGPG holds training activities internally as well as activities concerning how to approach and prevent gender-based violence targeted at different sectors of the community. It also encourages initiatives to improve the Public Prosecutor's Office's responses in cases of equality and non-discrimination and in criminal investigations. In addition, it produces information to favor the adoption of institutional policies focused on gender. The DGPG promotes a project to incorporate sexual diversity perspective into the organism. Through this project, transgender women began working in different areas of the Public Prosecutor's Office's. Also, the regulation of the different types of leaves was reform in order to include gender and sexual diversity perspective. In addition, the incorporation of gender and sexual diversity perspectives were included in different training activities held internally as well as activities targeted at different sectors of the community.

✓ **Department of Victims' Counseling, Support and Protection (Dirección General de Orientación, Acompañamiento y Protección de Víctimas / DOVIC).** It guides, supports, protects and provides general information to victims of crimes and promotes an interdisciplinary approach with the necessary referrals to ensure timely and effective technical assistance. Among others, it has three Special Programs: the Victims of Gender-based Violence Assistance Program, the Victim of Trafficking and Exploitation of Persons Assistance Program (including personas who are victims of sexual exploitation), and the Child and Adolescents Victims of Abuse and Sexual Abuse Assistance Program.

✓ **Department of Human Rights (Dirección General de Derechos Humanos / DGDH).** A permanent and specialized structure, aimed at enhancing the different policies promoted by the Public Prosecutor's Office to protect fundamental rights and to support the work of prosecutors in all matters concerning the respect and promotion of human rights recognized by the Constitution and by the international instruments ratified by Argentina. The Department coordinates the contributions made by different areas of the Public Prosecutor's Office to the reports of the Argentina before the treaty bodies, such as the CCPR and CEDAW. See particularly the document elaborated by the Department of Human Rights and the Department of Gender Policies with comments on the request for an Advisory Opinion made by Costa Rica to the Inter-American Court of Human Rights to interpret and determine the State's duties to recognize a person's name change according to their gender identity, and the compatibility of the domestic law in this matter.

On the other hand, it is worth mentioning that there are other structures that, although not having specific competence on violence based on sexual orientation and gender identity, play an important role in the prevention, investigation and prosecution of crimes which represent human rights violations, and which more specifically affect women and gay, lesbian, bisexuals, transgender and intersex persons.

One such structure is the Public Prosecutor's Office has a **Prosecutor's Office on Institutional Violence (Procuraduría de Violencia Institucional / PROCUVIN)**, which aims at strengthening the Public Prosecutor's Office 's responses to investigations and trials of crimes committed by security forces and prisons using violence. Among its functions are receiving and deriving denunciations, and conducting monitoring inspections in places where gay, lesbian, bisexuals, transgender and intersex persons have been deprived of liberty. In addition, the **Department of Access to Justice (Dirección General de Acceso a la Justicia/ ATAJO)**, created in 2014, aims to ensure the access to justice for vulnerable persons.

Finally, it should be noted that in relation to violence based on gender and sexual orientation, the competence of the Public Prosecutor's Office, and therefore the proceedings of these structures, is limited to the federal justice system –in regard to the prosecution of federal crimes, such as people trafficking– and to the ordinary justice only in those common crimes –such as cases of gender-based violence in which civil judges and prosecutors intervene– occurring in the City of Buenos Aires. Likewise, according to the Organic Law of the Public Prosecutor's Office, to ensure the effective validity of the Constitution and international human rights instruments, the Public Prosecutor's Office may also intervene, by providing its legal opinion –judgments– in cases brought to the attention of the Supreme Court of Justice –even in cases of former provincial jurisdiction– which involve the interpretation or direct application of a rule of the Constitution or international human rights instruments.

III. Opinions of the Public Prosecutor's Office before the Supreme Court of Justice

In recent years, the Public Prosecutor's Office has had the opportunity of ruling before the Supreme Court in a case involving discrimination based on sexual orientation. Such pronouncement took into account international standards regarding the fact that sexual orientation cannot be used as grounds for denying or restricting any of the rights established in the American Convention on Human Rights.

It is worth mentioning that although the opinions of the Public Prosecutor's Office are not binding, such pronouncements constitute an essential part of the process for the Supreme Court to decide on the case. In addition to providing informed legal opinions, these documents represent the society's general interests in the case and in the public debate concerning such conflict. Thus, the legal developments incorporated in each of these opinions constitute a fundamental step towards the protection of human rights.

A document prepared by the Department of Human Rights, which systematize the data of the case and the standards of the international human rights law which were developed in this opinion, is attached to this report (in Spanish).

IV. Detail of attached documentation

- 1) Organic Law of the Public Prosecutor's Office (No. 27,148). In this regard, see particularly arts. 1, 2, 12, 22, 23, 24, 32, 33, and 35.
- 2) Resolutions for the creation of the following Public Prosecutor's Office's structures: a) Prosecution Unit Specialized in Violence against Women; B) Prosecutor office of Trafficking and Exploitation of Persons; C) Department of Gender Policies; D) Department of Victims' Counseling, Support and Protection E) Department of Human Rights; F) Department of Access to Justice; G) Prosecutor Office of Institutional Violence.
- 3) Documents by the Prosecution Unit Specialized in Violence against Women: A) Resolution establishing UFEM's functions and organization (Resolución PGN n° 427/2016); B) UFEM's Operation Manual (Manual de Funcionamiento de UFEM); C) Brochure about UFEM's institutional mission, programs and organization; D) Report on Diana Sacayán's Case.
- 4) Documents by the Department of Gender Policies: A) Regulation of the different types of leaves (Resolution PGN N° 3140/16); B) Media campaign to promote the National Law on Gender Identity (No. 26.743).
- 5) Document elaborated by the Departments of Human Rights on the opinion of the Public Prosecutor's Office in the case "F. Ana María" before the Supreme Court concerning discrimination based on sexual orientation.
- 6) Document elaborated by the Department of Human Rights and Department of Gender Policies with comments on the request for an Advisory Opinion made by Costa Rica to the Inter-American Court of Human Rights to interpret and determine the State's duties to recognize a person's name change according to their gender identity, and the compatibility of the domestic law in this matter.