

INTER-AMERICAN COURT OF HUMAN RIGHTS

REQUEST FOR AN ADVISORY OPINION

**WRITTEN OBSERVATIONS CONCERNING “THE CREATION OF A
RAINBOW SECTOR FOR THE LGBTI+ PRISONERS”**

Submitted by

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According to Article 73(3) of the Rules of Procedure of the Inter-American Court of Human Rights.



1. Introduction.

VINÍCIUS ALEXANDRE FORTES DE BARROS respectfully presents these written observations to the Inter-American Court of Human Rights in agreement with conventional and procedural rules governing third party interventions before the Inter-American Court of Human Rights in the exercise of its advisory jurisdiction.

These written observations will argue specifically on the imprisonment of LGBTI+ individuals and some actions that the State should address when confining these persons.

2. The Request made by the Inter-American Commission of Human Rights.

Briefly, the Inter-American Commission of Human Rights has submitted a request for an Advisory Opinion about the protection of vulnerable groups when imprisoned.

The questions are:



1. ¿Cómo deben los Estados tomar en cuenta la identidad de género con la cual se identifica la persona al momento de determinar la unidad a la que debe ingresar?
2. ¿Qué obligaciones específicas tienen los Estados para prevenir todo acto de violencia contra personas LGBT privadas de la libertad que no impliquen segregación del resto de la población carcelaria?
3. ¿Cuáles son las obligaciones especiales que tienen los Estados respecto de las necesidades médicas especiales de personas trans privadas de la libertad y, en particular, de ser el caso, respecto de quienes deseen iniciar o continuar con su proceso de transición?
4. ¿Qué medidas especiales deben adoptar los Estados para asegurar el derecho a la realización de visitas íntimas de personas LGBT?
5. ¿Qué obligaciones particulares tienen los Estados en materia de registro de los diferentes tipos de violencia contra personas privadas de la libertad LGBT?

This written work will focus specifically about the 2nd and 4th of the questions above mentioned.

3. The imprisonment of LGBTI+ persons under the Inter-American System of Human Rights.

The American Convention of Human Rights states the non-discrimination principle in its first article. However, this principle does not deter state public policies to optimize material equality when two vulnerable groups are positioned in the same privation of rights.



Due to this, prisoners¹ of a certain facility are considered a vulnerable population, but, normally under legal and through due process of law², they are put there with a previous crime or illegal act made.

Therefore, stated that prisoners are a vulnerable group, there are intersections of human rights that permit the analysis of vulnerable groups or minorities inserted in a big vulnerable group, and this is the case of elder, LGBTI+, women and other types of prisoners.

The LGBTI+ population is considered a vulnerable group. Regarding this, the Yogyakarta +10 principles, in Principle 30, registers that States shall:

B) Take appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors;

¹ I will use the word *prisoner* as a synonym to all types of persons in a facility that deprives them partially or totally from their liberty.

² In this written work, it is not discussed the process, if legally or not, through which someone is put in a confinement.



Therefore, whenever a specific group is the subject of liberty deprivation, some states create specific facilities to locate those individuals. These occur when women, children and mental health persons commit a crime and must be put away from society. In most of the countries, as an example in Brazil, to put a child or a woman in the same cell in which a male adult lives constitutes a crime *per se*, violating the rights of the child or the woman.

Hence, the same alternative should be used to LGBTI+ population. Instead of putting all the gays, lesbians, transgenders, queers, intersexuals and others in the same cells where they can be discriminated or suffer any kind of violence (including psychological ones), if the State has the means to create a specific place to allocate those individuals it would benefit not only their mental health but follow the rights stated by the Inter-American Court in its Advisory Opinion 24.

Even though the Inter-American Commission of Human Rights questions if some kind of actions would not generate segregation, the only kind of segregation that is prevented under the American Convention of Human Rights is the one that violates the prisoners' rights. In this case, to create a place where LGBTI+ persons can comply with their sentences and prison time without external violence is not a type of discriminatory segregation.



As an example, in Brazil, in the State of Mato Grosso, in the Resocialization Center of Cuiabá (the capital of Mato Grosso), a **Rainbow Sector**³ was created, in which LGBTI+ persons can live apart from the other prisoners.

In 2019, there were 22 LGBTI+ individuals in that sector, in a prison that has 1,1 thousand persons deprived of their liberty.

Even though they are in Portuguese, these links (news) prove the beneficial aspects of the **Rainbow Sector** in a prison.

<https://www.tjmt.jus.br/noticias/58269#.YADgEC35ROY>

<https://www.tjmt.jus.br/noticias/58269#.YADgEC35ROY>

<http://www.mt.gov.br/-/10189275-em-visita-a-cuiaba-diretora-do-ministerio-dos-direitos-humanos-elogia-ala-lgbt>

Additionally, these videos demonstrate the routine of the LGBTI+ prisoners and some of their stories:

<https://www.youtube.com/watch?v=IMTVoDqRI8M>

https://www.youtube.com/watch?v=qcfe_mCLbqM

³ It should be registered that State Judge in Mato Grosso Gerardo Fidelis is the one responsible for the administration and continuation of the Rainbow Sector. This sector has been created for 9 years, in 2012.



Thus, the creation of the **Rainbow Center/Space** should allow the respect and resocialization of the LGBTI+ prisoners.

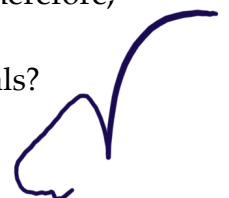
3.1. Proposal

The creation of LGBTI+ specific sectors in detention centres, imprisonment facilities, jails or other types of locations that deprive the liberty of LGBTI+ persons.

3.2. Methods of implementation

It must be noted that the creation of these specific places demands certain types of previous questions:

1. Does the State have the necessary space for this implementation?
2. Is there a local, regional, or national demand for these centres? Does the State have previously researched and registered its LGBTI+ prisoners;
3. When such a location is possible, the LGBTI+ persons of a certain prison want to move voluntarily to that sector?
4. Are there any occurrences of violence or discrimination against LGBTI+ prisoners that constitute an international state responsibility and, therefore, States should create at least some regional prisons for LGBTI+ individuals?



These questions lead to a certain method of implementation of the **Rainbow Sector** that States may initially follow:

ACTUAL DEMAND → CREATION OF LOCAL OR REGIONAL CENTERS → LGBTI+ PRISONERS ASKED IF THEY WANT TO RELOCATE.

NON-EXISTING REGISTRATION OF LGBTI+ PRISONERS → PREVIOUS RESEARCH → CREATION OF LOCAL OR REGIONAL CENTERS.

3.3. The benefits of the Rainbow Sector:

Apart from the videos, interviews and news above mentioned, there are two benefits for the LGBTI+ prisoners:

1. The protection from acts of discrimination and violence, of any kind, and the fact that LGBTI+ prisoners may concern solely about their resocialization;

2. It will be unnecessary to create another place for intimate visits where all the other majority of prisoners have this kind of relationship. The creation of the Rainbow Sector by the States itself is a place for the protection of the LGBTI+ persons. Thus, whenever a State creates this place, it should only create one more room for intimate visits.



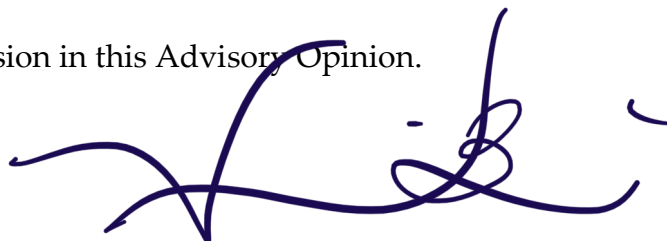
4. Conclusion.

The creation of a **Rainbow Sector** promotes the protection of LGBTI+ prisoners and does not constitute a type of prejudicial segregation. On the contrary, it optimizes the resocialization of that vulnerable group.

Additionally, in this place it should be created a special room for private/intimate visits. This will reduce any risk for the LGBTI+ population if they use the same facilities as other non-LGBTI+ prisoners.

Finally, I expect to have contributed to answer questions 2 and 4 about the LGBTI+ persons deprived of their liberty asked by the Inter-American Commission of Human Rights.

I will be available anytime to answer any kind of questions or help the Inter-American Commission in this Advisory Opinion.



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