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The LGBTTTI Coalition Working at the OAS

Celebrates the Approval of the Inter-American Conventions Against Racism and Against All Forms of Discrimination and Intolerance

- These Conventions mark the first time in the region that sexual orientation and gender identity are explicitly mentioned in an international instrument.
- “A truly historic act,” according to dozens of gay, lesbian, bisexual, trans and intersex (LGBTI) activists present at the OAS Assembly.

June 6, 2013

The 43rd General Assembly of the Organization of American States (OAS) in Antigua, Guatemala was the site of historic progress toward the protection of human rights related to sexual orientation and gender identity in Latin America and the Caribbean. In session from June 4 – 6, 2013, the General Assembly approved two Inter-American Conventions that explicitly mention sexual orientation and gender identity as protected categories against all forms of discrimination: a first for any OAS human rights instrument.

During the June 5th Plenary Session, each member state of the OAS endorsed the draft texts of the Inter-American Convention Against Racism, Racial Discrimination, and All Related Forms of Intolerance, and the Inter-American Convention Against All Forms of Discrimination and Intolerance. The events marked a historic moment for the Inter-American system for the protection of human rights as well as for the LGBTTTI movement within the region.

The first article of the Inter-American Convention Against All forms of Discrimination and Intolerance includes a broad definition of discrimination which explicitly prohibits discrimination on the basis of sexual orientation, gender identity, or gender expression. Internationally, this Convention constitutes only the second instance - and the first within the Americas - that these categories are included in an approved international Convention. It represents an important achievement at both regional and international levels. The approval is also an important achievement and a testament to the advocacy efforts of the members of the LGBTTTI Coalition who have been active within the OAS system around SOGI rights.

Upon approval, the Conventions were put before representatives of member states for signature, and on the last day of the sessions, Argentina, Uruguay, Brazil, Costa Rica, Antigua and Barbuda, and Ecuador all signed the Conventions. Once signed, the Conventions will need

to be ratified by each of the signatory member states, and will enter into effect 30 days after ratification by only two States.

The Long Road to Approval

Discussions and regional negotiation processes around the Convention began in Santiago, Chile in 2000 at the regional conference in preparation for the World Conference Against Racism held in Durban in 2001. In Santiago, OAS member states decided to develop a draft Inter-American convention to prevent, sanction, and eliminate racism and all forms of discrimination and intolerance. At that time, Brazil was charged with leading the drafting process. In 2005, the General Assembly of the OAS formed a working group to begin formal negotiations around this legal instrument under the auspice of the Committee on Juridical and Political Affairs. The first draft presented by Brazil included sexual orientation among the different categories for protection of human rights. The LGBTTTI Coalition Working at the OAS was formed at that time specifically to support this process, and first convened during the July 2006 Conference of the Americas Against Racism, Xenophobia and other forms of Intolerance in Brasilia. That same year, after a survey of 152 civil society organizations in the region, the Coalition successfully proposed that gender and gender identity and expression also be included in the draft text of the convention. The text had since been under negotiation without progress since 2007, first with Brazil as head of the Working Group, followed by Colombia in 2009, Costa Rica in 2010, and Antigua and Barbuda in 2012.

The official delegations of the Working Group decided to divide the text of the draft Convention into two documents: one specifically about racism, and the other against all forms of discrimination and intolerance. For years the process was stalled, as the working group failed to achieve the consensus necessary to propose the documents for approval before the General Assembly. In 2011, Argentina, Mexico, Uruguay, Brazil, Costa Rica, Venezuela, and Antigua and Barbuda finally achieved the consensus and the negotiations of the text of the conventions concluded in May 2013 and both draft Inter-American Conventions were presented for approval before the 43rd General Assembly of the OAS.

The Inter-American Convention Against Discrimination and All Forms of Intolerance

Divided into five chapters and 22 articles, the text of the Inter-American Convention which prohibits all forms of discrimination and intolerance in public and private spheres includes among the obligations of the state to prevent, eliminate, prohibit and sanction all acts and manifestations of discrimination and intolerance, including: the publication, circulation and dissemination of any material which defends or incites hate and intolerance; acts which would constitute genocide or crimes against humanity; violence and criminal acts against the property of the victims; any repressive or restrictive action of the right to enter public and private places, or to access to education and all social, economic and cultural rights.

Likewise, the Convention obliges OAS member states to adopt policies, measures and affirmative actions in support of persons or groups which suffer discrimination and intolerance, as well as legislation that clearly defines and prohibits discrimination and intolerance, and

guarantees equal access to the justice system, expeditious and effective judicial procedures, and fair compensation for damages in civil or criminal liabilities.

In order to monitor the fulfillment of the commitments undertaken by the signatory member states to both Conventions, the approved Conventions will establish an Inter-American Committee to be comprised by independent experts named by each signatory State.

For the LGBTTTTI Coalition, the significance of approval of these conventions lies in their reach across the Americas, and in the fact that they were signed by a country from Central America and a country from the Caribbean, regions where same-sex relations between consenting adults are criminalized until recently (in Central America) and to this day (in the Caribbean).

The Next Step: Ratifying the Conventions

The LGBTTTTI Coalition has served to catalyze the approval of the Conventions through its advocacy efforts at the OAS in Washington, DC and at each OAS General Assembly. The task now will be to continue this work at the national level so that the Conventions are ratified by each of the OAS member states.

As July Betances of *Colectivo de Mujer y Salud* in the Dominican Republic explains, “the next step is to make the approval of this international instrument known, to go to the Foreign Ministries of our countries and advocate to influence the signature and ratification process.” For this lesbian activist, the LGBTTTTI Coalition’s influence in the process has been critical, given the extensive advocacy work the Coalition undertook with the Foreign Ministries of members states of the region, with the OAS Secretary General, and at the Inter-American Commission on Human Rights. “Now,” as Betances affirms, “social organizations have a new instrument to employ as a tool to demand and defend human rights.”

Marcela Romero, General Coordinator of the *Red Latinoamericana y del Caribe de Personas Trans* (REDLACTRANS), a key organization conducting regional advocacy in Latin America and the Caribbean, noted that only Argentina, Uruguay, and Mexico City formally recognize gender identity, and that this, “poses a great obstacle for those who need an identity document in order to access our rights,” adding the importance of achieving these types of resolutions in our favor. Romero, who is also a member of the *Asociación de Travestis, Transexuales y Transgénero de la República Argentina*, also described how trans activists were able to influence the inclusion of gender identity and expression in the approved Convention through their advocacy efforts and the testimony they were able to provide for the first time about the situation of trans individuals before the Inter-American system of human rights.

The two approved Inter-American Conventions are instruments which are legally bound to each other; the LGBTTTTI Coalition calls upon all allied civil society organizations to join the effort for these Conventions to be signed and ratified by each OAS member state.