

Geneva, 30 April 2020

Dear Sir or Madam,

The International Institute on Race, Equality and Human Rights (Race and Equality) is an international human rights and capacity-building organization that documents and exposes human rights related to racial discrimination or discrimination based on sexual orientation and gender identity; advocates for legal and policy reform at the national level; uses strategic litigation at the regional and international levels; and engages the international community on critical human rights issues, including at the United Nations and regional bodies.

For the upcoming **Third Session of the Forum on Human Rights, Democracy and the Rule of Law on the theme of "Equal Access to Justice for All: a Necessary Element of Democracy, Rule of Law and Human Rights Protection,"** we would like to stress the need to discuss the intersectional experience of discrimination and how this discrimination affects access to justice, as well as what strategies can be implemented to address these issues. Specifically, we propose the following topics for the forum:

**Access to Justice in the Context of Armed Conflicts for the LGBTI Community – Colombia:**

The Colombian Peace Agreements (Acuerdos de La Habana) included the integration of an intersectional and gender focus in the establishment of the Integrated System of Truth, Justice, Reparation and Non-Repetition. This was an opportunity for the LGBTI community to be finally recognized as victims that were particularly impacted by the Armed Conflict. Notably, from the total of 8,5 million registered victims, 2.150 identify themselves as LGTBI.<sup>1</sup> Although the inclusion of the intersectional focus is an important step, there have been problems with its implementation. Human rights defenders and LGTBI activists continue to demand more visibility for the human rights violations related to discrimination based on sexual orientation and gender identity. The lack of recognition of intersectionality with forms of discrimination based on race, gender, age and national origin also remains a challenge. LGBTI activists from these communities face additional forms of discrimination. Finally, there is an urgent need to recognize and connect the implications of past violences against the LGTBI community to the current patterns of structural discrimination that prevail in Colombian society and the democratic structure put in place after the peace accords.

*Panelist:* Wilson Castañeda, Director of LGBTI advocacy organization Caribe Afirmativo. This organization works to promote the human rights of LGBTI people, with a special focus on their place in post-conflict society and the construction of peace.

---

<sup>1</sup> Informe Basta ya! Colombia: memorias de guerra y dignidad. Centro Nacional de Memoria Histórica (2013).

## **The Constitutional Framework and Intersectionality – Cuba**

The Cuban Constitution of April 2019, adopted after a public consultation process and referendum marked by repression of critical and opposing views, includes guarantees for human rights, non-discrimination, and sustainable development on paper, but maintains the Communist Party's dominance of the political system and of the media.

The Constitution will be implemented through a series of laws and decree-laws in the Cuban legislature, the National Assembly of People's Power (Asamblea Nacional de Poder Popular),<sup>2</sup> presenting an opportunity to reflect on how these laws will effect women's rights and the ability of women to claim their rights. Significantly, the legislative schedule includes a reform of the Criminal Code, Criminal Procedure Code, and the judicial system. The codes currently in effect contain vague laws and procedures that have historically allowed for the criminalization of human rights defenders without respect for their due process rights and without an ability to challenge the violation of these rights in front of an independent court. This has resulted in a large number of political prisoners, including many female political prisoners; women convicted of common crimes after participating in peaceful protests. Women also have no legal protection against domestic violence and abuse, given that there is no law prohibiting violence against women and the Cuban legislature has refused to consider adopting one. While Cuban lawmakers are adopting major reforms, it is important to pressure them to take this opportunity to improve women's access to justice.

This body will also see the creation of a new Family Code to govern marriage and parenthood, to be adopted through a national referendum. Notably, marriage equality and other protections for LGBTQ persons and their families were removed from the proposed Constitution before it could be voted on due to public opposition, much of it directed by groups espousing anti-LGBTI hatred. A law or policy to address the needs and rights of Afro-Cubans is also lacking.

The lack of a constitutional framework where national laws can be allocated to address discrimination and violence based on sex, gender identity and sexual orientation, must be understood as a backlash that will deeply affect the rights of women and the LGTBI community in Cuba. Discussing these issues is important now more than ever, when many LGBTI activists are being forced to leave the country.

*Panelist:* Oylín Hernández Rodríguez<sup>3</sup>, member of the Ladies in White (Damas de Blanco). She is an outspoken activist for the release of political prisoners in Cuba, and has herself been the victim of numerous arbitrary detentions, interrogations, and threats from Cuban State Security agents.

---

<sup>2</sup> These laws include a law to create judicial avenues for addressing rights violations; reforms to the Tribunal Popular system; a new criminal code and a law governing penal sentences; Law on Identity; Law on Migration; Law on Associations; Decree-Law on the right to assemble; Decree-Law on telecommunication and information technologies; Decree-Law on protection of personal data.

<sup>3</sup> For security reasons and to prevent potential travel bans, we ask to keep the name confidential.

## **The Situation of Indigenous and Afro-Descendant Peoples – Nicaragua**

The *Awás Tingni* decision by the Inter-American Court of Human Rights on Nicaragua was the first time an international tribunal with legally-binding authority found a State in violation of the collective land rights of an indigenous community. This decision positively contributed to building the national framework to protect ancestral and territorial rights.

Nevertheless, the indigenous and Afro-descendant peoples of Nicaragua have been facing serious deterioration in the enjoyment of their human rights for several years as a result of acts of violence taking place in their communities, as well as the failure of state institutions to effectively address the issue of clearing title to their territories. These infringements have grown even worse as a consequence of the ongoing human rights and democratic crisis.

Most of this acts of violence are taking place in the Northern Caribbean Coastal Region, and have included alleged kidnappings, killings, sexual assaults, threats, arson of homes, robberies, ambushes, and other attacks on community members. This violence is related to the indigenous community's historic claims to their ancestral territories. At present, seven communities of the Miskitu indigenous people are protected by provisional measures ordered by the Inter-American Court of Human Rights.

### *Panelists:*

Lottie Cunningham Wren, lawyer and founder of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua - CEJUDHCAN). This is an indigenous organization which works to promote and defend human rights with a focus on the collective and territorial rights of indigenous peoples and people of African descent.

Nora Newball, member of the Creole Government of Bluefields and the Alliance of Indigenous and Afro-descendant People of Nicaragua (APIAN, for its initials in Spanish)

Thank you for considering our suggestions for the **Third Session of the Forum on Human Rights, Democracy and the Rule of Law.**

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Carlos Quesada".

**Carlos Quesada**

**Executive Director**