

Stonewalled –  
still demanding respect

Police abuses against lesbian,  
gay, bisexual and transgender people in the USA

Amnesty International Publications

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Stonewalled – still demanding respect

Police abuses against lesbian, gay, bisexual and transgender people  
in the USA

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## **Preface**

### **Methodology**

This report is based on the report Stonewalled: police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S. produced by Amnesty International USA (AIUSA) in 2005. It is based on research conducted between 2003 and 2005 which focused primarily on four very different and geographically diverse US cities – Chicago (Illinois), Los Angeles (California), New York (New York), and San Antonio (Texas). All four cities have well-documented histories of police brutality and misconduct and each has taken at least some steps to address these human rights abuses. They, therefore, provide an insight into the progress that has been made and the challenges that remain.

One of the difficulties experienced by Amnesty International (AI) in researching abuses against lesbian, gay, bisexual and transgender (LGBT) people both in the community at large and by state officials, is the lack of information gathering by the authorities and non-governmental organizations at state or national level. Even in the four cities highlighted, the local capacity to document abuses by the police where LGBT people are specifically targeted is limited.

AI is greatly indebted to those local LGBT and police monitoring groups as well as many other organizations and individuals who have generously shared with us their own documentation and contacts.

AI has obtained data for this report from a wide range of sources in order to collect information on a national, as well as local, level. These included questionnaires, interviews in the selected cities and research of statutes, ordinances and media reports from across the USA. (See Appendix B for more details.)

#### **[BOX]**

AI issued three surveys in late 2003 to law enforcement agencies, the internal affairs (investigatory) divisions of police departments and to civilian complaint review boards across the USA about policies and practices relating to the LGBT community. Questions focused on interactions with the LGBT community; training policies; detention procedures; policies, practices and statistics on complaints against police officers; and early warning systems to identify officers who are prone to commit abuse or misconduct. AI conducted

over 170 interviews and met LGBT rights defenders and campaigning organizations as well as activists working against police brutality, police watchdog organizations, youth outreach organizations, immigration groups, sex worker rights organizations, civil rights organizations and local community activists. AI also collected over 200 testimonies and conducted follow-up interviews on every testimony included in the report. The abuses described are consistent with patterns found across jurisdictions and these patterns and allegations were confirmed by those interviewed. AI also met with law enforcement officials in New York City, Chicago, San Antonio and Los Angeles.

**[END BOX]**

A number of individuals spoke to AI on the condition of anonymity and some individuals requested that the location where the alleged incident took place not be disclosed; however, names and locations are on file with AIUSA.

## **Definitions**

The language people use to describe their sexual or gender identity varies widely both from culture to culture and within communities. Terminology is both constantly evolving and deeply imbued with the cultural connotations attached to the specific terms used. In this report the terms lesbian, gay, bisexual and transgender (LGBT) are used because they are commonly found in the international human rights discourse. In a report of this nature it is impossible to fully reflect the diversity of terms and identities of the people and groups involved. The fact that this particular term is used is in no way intended to ignore the diversity of terms by which individuals choose to express their gender identities or sexual orientation. Throughout this report AI uses the term young LGBT people to refer to individuals under the age of 21.

Sexual orientation refers to a person's "emotional, sexual, romantic, or affectional attraction. It exists along a continuum that ranges from exclusive homosexuality to exclusive heterosexuality and includes various forms of bisexuality. It is different from sexual behavior because it refers to feelings and self-concept."<sup>91</sup>

Gender refers to the way in which a society defines the concepts of masculinity and femininity. It is different from a person's sex because it refers to social and cultural concepts rather than biology or anatomy. A person's subjectively felt gender identity may be at variance with their physiological characteristics.

Gender variant is used to describe people who do not conform to traditional gender norms, especially in appearance or presentation.

Homophobia is used to describe fear of, discrimination against or hostility towards lesbians, gay men or bisexual people.

Transphobia is used to describe fear of, discrimination against or hostility towards transgender people.

Transgender is used as an umbrella term. It can be used broadly to describe individuals that do not conform to the gender role expectations of their biological sex. It encompasses people who seek sex reassignment, sometimes involving hormones or surgery, to bring

their physical characteristics into conformity with their gender identity.

## Chapter 1

### Introduction

[CAPTION] Thousands of marchers carry a mile-long banner “in a continuous path of freedom” in New York, 1994. The demonstration commemorated the 25th anniversary of the response of the lesbian, gay, bisexual and transgender (LGBT) community to a raid by police in June 1969 on the Stonewall Inn, a popular gay bar in New York. The raid provoked several days of rioting in protest at police abuse and repression. This sustained, organized action by the LGBT community galvanized a movement and captured the imagination of generations of LGBT activists.

© AP Photo/Eric Miller

[END CAPTION]

## Introduction

[BOX]

In August 2002, Kelly McAllister, a transgender woman, was arrested in Sacramento, California. Sacramento County Sheriff's deputies reportedly ordered Kelly McAllister to get out of her truck. When she refused, they allegedly pulled her out, threw her to the ground and started beating her. Kelly McAllister alleges that the deputies pepper-sprayed her, hog-tied<sup>2</sup> her with handcuffs on her wrists and ankles, and dragged her across the hot pavement. Still hog-tied, she was then placed in the back seat of the Sheriff's patrol car. She repeatedly asked to use the restroom, but the deputies refused, saying: "That's why we have the plastic seats in the back of the police car." She was left in the back seat until she defecated in her clothing. At the Sacramento County Main Jail, officers reportedly put Kelly McAllister in a bare basement holding cell. When she complained about the freezing conditions, guards reportedly threatened to strip her naked and strap her into the "restraint chair"<sup>3</sup> as a punitive measure. When Kelly McAllister was returned to the Sacramento jail in September, following a court appearance in a separate incident guards put her in a cell with a male inmate. She reports that the detainee repeatedly struck, choked and bit her and then raped her. Kelly McAllister asked for medical treatment for injuries received from the rape, including a bleeding anus. After a medical examination, she was transported back to the main jail where she was again reportedly subjected to threats of further attacks by male inmates and taunted by the Sheriff's staff. Kelly McAllister reportedly attempted to commit suicide twice after her return to jail. The Sheriff's Department opened an investigation into the alleged rape, and the inmate accepted a plea for "unlawful intercourse in jail". He was sentenced to three months in jail. Despite having filed a full report with the Sheriff's Department, no Sheriff's Deputy has been disciplined for their treatment of Kelly McAllister.

[END BOX]

The USA, like many countries, has a long history of both criminalizing homosexuality and failing to protect LGBT people against violence and discrimination. In the past three decades the LGBT rights movement has made significant progress in promoting greater recognition of the rights of LGBT people in the USA and in confronting human rights

abuses by law enforcement officers. Police departments have increasingly been held to account for their treatment of LGBT people. Anti-discrimination legislation at the local level has greatly facilitated this and many police forces provide some level of training about working with the LGBT community.

However, this report clearly shows that serious police abuses, including gender-based violence amounting to torture and ill-treatment, against the LGBT community persist. The abuses reported range from sexually explicit, abusive language and threats to sustained beatings and rape.

Some reports involve the use of excessive force during arrest. Others show that victims of crime, if they are lesbians, gay men or bisexual or transgender individuals, are at risk of abuse from the officers called to assist them. The common factor is that the reason for the abuse is police reaction to their sexual orientation or gender identity.

Many transgender and gender variant people have told AI that they have been subjected to searches which were humiliating and unnecessary. They also expressed their very real fear of being detained inappropriately in gender-segregated cells where they are at risk of assault and sexual violence by other detainees.

AI's research has shown that police responses to crimes against LGBT people, including domestic violence, are often inadequate, and indeed sometimes hostile. This pattern has become so entrenched that fear of reporting crimes is widespread among many sectors of the LGBT community. AI is particularly concerned about reports of retaliation against people who have come forward with complaints against police officers.

AI's research revealed a pattern of discriminatory enforcement by officials of "zero tolerance" and "quality of life" regulations against members of LGBT communities. AI and other organizations are concerned that vaguely worded regulations and laws which rely excessively on officers' judgement, can lend themselves to discriminatory application. This is particularly evident in the enforcement of morals regulations.<sup>4</sup>

## [BOX]

Sexual abuse is not incidental to torture. AI's research over many years shows how torture often takes sexualized forms. Torturers know that an attack on someone's sexuality is an attack on their very sense of self. The shocking images from Abu Ghraib depicting the degradation and sexual abuse of Iraqi detainees by US soldiers were unusual because this kind of torture is rarely exposed. Most sexual abuse occurs in places where abusers

feel they will be safe from censure. The degree of degradation felt by the victim is such that torturers can usually rely on survivors' silence. The Abu Ghraib images provoked outrage not just because of the cruelty and racism that they depicted but also because of the (homo)sexualized nature of the images. This revealed not only the contempt of the jailors for their victims but also how a person's gender or sexuality can be targeted by the torturers with devastating effect. As this report demonstrates, this contempt for those perceived to be "different" to "us" or to the "norm" is not unique to armed forces on overseas operations, it pervades law enforcement attitudes and practices back in the USA.

[END BOX]

[PULL-OUT]

Sexual violence between prisoners constitutes torture or ill-treatment if the authorities have failed to ensure compliance with rules such as those requiring men and women to be held separately, or have failed to take other appropriate action to ensure prisoners' safety.

[PULL-OUT]

## Identity-based discrimination

[QUOTE]

“Within the lesbian community I am Black, and within the Black community I am a lesbian. Any attack against Black people is a lesbian and gay issue, because I and thousands of other Black women are part of the lesbian community. Any attack against lesbians and gays is a Black issue because thousands of lesbians and gay men are Black. There is no hierarchy of oppression.”

Audre Lorde<sup>5</sup>

[END QUOTE]

Discrimination – the systematic denial of rights to certain people because of who they are or who they are perceived to be – is a human rights abuse which often leads to further abuses.<sup>6</sup> It has serious consequences for targeted groups, denying them access to redress and equal protection under the law. It also often leads to a lack of official action that reinforces impunity for the abusers. The failure of the US authorities to tackle issues such as prejudice and hostility towards the LGBT community within police forces creates a climate in which such violations can proliferate.

Within the LGBT community, transgender individuals, people from ethnic or racial minorities, young people, homeless people, and sex workers are at most risk of police abuse and misconduct.

Race is an important factor in determining the likelihood of an LGBT person being targeted for police abuse. This mirrors the systemic racism still found in many areas of policing in the USA.<sup>7</sup>

Media portrayal of LGBT people in the USA often focuses on the popular myth of the “affluent gay community”. However, reports indicate that the LGBT community earns, on average, less than the general population. Pervasive discrimination combined with lack of legal protection put many within the LGBT community at risk of poverty and homelessness. Being homeless increases the likelihood of being harassed or abused by police as many states have specific laws and policies penalizing homeless individuals for engaging in conduct such as sleeping, eating or congregating in public.

[CAPTION]

Around 300 people hold a candlelit vigil in Santa Fe, New Mexico, for James Maestas, a young gay man who was beaten and badly injured in March 2005 as he left a restaurant where he had been eating with friends. The District Attorney said he was prepared to invoke a statute introduced in 2003 which allows an additional year's imprisonment to be imposed for an offence deemed to be a "hate crime". Four men pleaded guilty to charges in connection with the attack and were due to be sentenced in December 2005.

© AP Photo/Jeff Geissler [END CAPTION]

Transgender people often face considerable obstacles in realizing their human rights. In most jurisdictions their human rights are not legally recognized or protected. Combined with pernicious cultural prejudice, this ensures that transgender people are consistently subjected to some of the harshest forms of discrimination and denied their economic, social and cultural rights. Studies have revealed extremely high rates of unemployment and underemployment in the transgender community. Reports indicate that a significant proportion of the transgender community is homeless. They often have difficulty accessing homeless shelters that are safe for them. As a result, they face life on the streets where they are more likely to come into contact with the police and to become involved in illegal activities in order to make money for food and rent.

[CAPTION]

Attorney Sharon Zealey holds up a petition in February 2004 with signatures from 13,000 Cincinnati voters in favour of repealing a 1993 amendment to the city charter which they claimed made discrimination against gays and lesbians legal. The amendment was repealed in November 2004.

©AP Photo/Mike Simons [END CAPTION]

Young LGBT people face a number of challenges stemming from society's reaction to their sexual orientation and/or gender identity. Most young LGBT people experience significant harassment at school and are at greater risk of violence in the home. A Rhode Island study<sup>8</sup> found that nearly half of LGBT youth end up having to leave their homes because of their families' reaction to their sexual orientation or gender identity.<sup>9</sup> It has been estimated that in some US cities up to 40 per cent of homeless young people are gay,

lesbian, bisexual or transgender.<sup>10</sup> Young LGBT people who are homeless may commit non-violent offences, such as sex work and theft, in order to survive life on the street, which invariably increases their contact with the police. One study found that up to half of the gay and bisexual young men forced out of their homes because of their sexual orientation engage in sex work to support themselves.<sup>11</sup>

The pervasive discrimination faced by members of racial or ethnic minorities in the USA, especially at the hands of law enforcement officials, has been extensively documented by many organizations, including AI. Reported abuses include racist language, harassment, ill-treatment, unjustified stops and searches, false arrests, use of excessive force, unjustified shootings, and torture.<sup>12</sup> The problem of racism in US policing was also noted by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and other related intolerance in his report on the USA.<sup>13</sup> Although the national debate on police misconduct has focused primarily on African-American and Latino communities, police abuse of Native Americans and individuals of Asian descent is also prevalent. Racial profiling of citizens and visitors of Middle Eastern, North African and South Asian descent and others who appear to be from these areas has substantially increased since the attacks of 11 September 2001.<sup>14</sup>

[BOX]

#### Rights and the law

Lesbian, gay, bisexual and transgender individuals are entitled to equality before the law and to respect for their human rights. They have the right to freedom of movement, expression and association; freedom from arbitrary arrest and detention; and freedom from torture and ill-treatment.

#### US law

Neither the US Constitution nor federal legislation explicitly provides protection from discrimination against lesbian, gay, bisexual or transgender individuals. Nevertheless, the emergence of a strong LGBT rights movement has been successful in pushing forward greater recognition of the rights of LGBT people in the USA in the last three decades.

For example, in 2003, the US Supreme Court found unconstitutional all remaining criminal “sodomy” statutes in the USA.<sup>14</sup> As of March 2005, 16 states and the District of Columbia protected workers against discrimination based on sexual orientation in both the public

and private sectors, and an additional 11 states prohibit discrimination based on sexual orientation against state employees. An AI examination of municipal ordinances in the largest city in each of the 50 US states revealed that of the 41 cities that had enacted local human rights ordinances against discrimination in areas such as employment and housing, 26 provided protection from discrimination on the basis of sexual orientation, and 14 included gender identity as a prohibited ground for discrimination.

International law

The USA is a party to:

- the International Covenant on Civil and Political Rights (ICCPR);
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- the International Convention on the Elimination of All Forms of Racial Discrimination.

The UN Human Rights Committee, the body which monitors the implementation of the ICCPR, has made important statements regarding LGBT rights.

It has urged states to repeal laws criminalizing homosexuality and to include a ban on discrimination based on sexual orientation in their constitutions or other fundamental laws. It has stated that the clauses of the ICCPR which ban discrimination on the basis of “sex” also covers discrimination on the basis of “sexual orientation”. International standards on the conduct of law enforcement officials and on the treatment of detainees and prisoners stress the right of victims of crime to be treated with compassion and respect for their dignity. They also set out the duty of states to act with due diligence to ensure that all parts of the population, without discrimination, are able to enjoy their basic human rights. For more information on international and domestic law, see Appendix A.

[END BOX]

In the aftermath of the attacks on 11 September 2001, immigration regulations were one of the primary tools the federal government turned to in its efforts to “combat terrorism”. Campaigners argue that policies and laws such as the National Entry and Exit Registration System (NSEERS),<sup>16</sup> the USA Patriot Act, and the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR Act), together with increasing scrutiny of immigrants and

asylum-seekers, have had the effect of “criminalizing” immigrants and increasing fear of authorities within immigrant communities.

Activists in Washington, D.C. told AI that LGBT immigrants “have a generally negative experience with the police here”, and noted that it is not clear whether their experiences are coloured by language differences, their undocumented status, their sexual orientation, their gender identity or expression or permutations of these factors working together.<sup>17</sup> Therefore it becomes more important that activists and officials alike understand how all of these identities and factors affect an individual’s interaction with law enforcement.

AI’s findings clearly demonstrate that the issue of police brutality cannot be tackled without addressing both the pervasive discrimination that LGBT people face, and the social, economic, and cultural marginalization of many within the LGBT community.

[BOX]

What needs to be done?

1. Federal, state and local governments should ensure that national, state and local laws prohibit all forms of discrimination based on sexual orientation and gender identity.
2. Officials at all levels should publicly condemn torture and other ill-treatment and make clear that any act of torture, ill-treatment or other human rights abuse, whoever the victim, will not be tolerated.
3. The authorities should ensure that all allegations and reports of police abuses are promptly and impartially investigated. All officers responsible for abuses should be adequately disciplined and brought to justice.
4. The US government should immediately ratify the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It should also withdraw reservations to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[END BOX]

## **Chapter 2**

### **Police brutality**

[CAPTION]

Activists from AIUSA join a gay pride march to protest against police abuses aimed at the LGBT community. New York, March 2004.

© AI

[END CAPTION]

## **Police brutality**

[BOX]

Frederick Mason, a 31-year-old African-American nurse's assistant, was arrested by Chicago police officers in July 2000 after an argument with his landlord. Frederick Mason stated that he was taken to the police station where two unidentified officers took him to an interrogation room, handcuffed him by the elbows and pinned him to a wall. The arresting officer reportedly pulled down Frederick Mason's pants, sprayed blue cleaning liquid on a billy club (truncheon) and used it to rape him. A second unidentified officer is alleged to have witnessed Frederick Mason's pants being pulled down, but walked away during the rape. Witnesses have attested that Frederick Mason entered police custody in good health but when he was released he had blood streaming from his rectum; a family doctor confirmed that he had been injured in the anal area. Frederick Mason contends that he was subjected to racist and homophobic abuse from the moment he was arrested.<sup>18</sup> In 2002, he received an out of court settlement.

[END BOX]

[CAPTION]

© Windy City Times

[END CAPTION]

AI has received reports of harassment and abuses against LGBT individuals by police from cities across the USA. The number and consistency of these reports suggest a climate of prejudice against LGBT people. It also indicates that officers believe they are unlikely to be challenged or punished for serious assaults, some of which amount to torture, against the LGBT community. In AI's experience, when abusers believe they can act with impunity, serious abuses are more likely to occur.

AI's research shows that LGBT individuals who do not conform to traditional gender norms, especially in their appearance or presentation, are more likely to be singled out for verbal, physical and sexual abuse. It also shows that transgender individuals are disproportionately targeted by law enforcement officials.

[BOX]

In 2004 a lesbian from Athens, Georgia, filed a civil lawsuit alleging that a former Gwinnett County Deputy raped her because she is a lesbian. The officer reportedly forced her into her apartment at gunpoint before raping her. The woman said the officer vowed to “teach her a lesson” and said the world “needed at least one less dyke and he was going to make sure that happened.”<sup>19</sup> The officer was charged with rape, false imprisonment, aggravated assault with a deadly weapon, aggravated assault with intent to rape, and violating his oath of office. According to the Athens-Clarke County District Attorney’s office, the officer was acquitted of most charges, but found guilty of violating his oath of office. The officer agreed to a deal whereby he received two years’ probation during which he was to have no contact with the victim. The officer was banned from Athens-Clarke County and promised not to appeal the decision.

[END BOX]

Homophobia and racism often occur together. A significant proportion of reports of abuse against LGBT individuals involved people from racial or ethnic minority groups. Age and socio-economic and immigration status also contribute to the risk of abuse by law enforcement officials. For example, a Chicago activist told AI that young LGBT individuals who engage in sex work report that officers — sometimes on duty and other times not — ask for sexual favours. Physical abuse against LGBT sex workers, particularly transgender women, was reported to AI from a number of US cities.

## **Sexual abuse**

[BOX]

X [name known to AI], a Native American transgender woman, told AI that in October 2003 she was stopped in Los Angeles by two police officers as she was walking along a street in the early hours of the morning. The officers said they were taking her to jail for “prostitution” – a charge she denies. X alleges that the officers handcuffed her, put her in a patrol car and drove her to an alley off Hollywood Boulevard. The officers then stopped the car, pulled her out and began hitting her across the face, shouting sexual abuse at her.

They then reportedly threw her back into the patrol car, ripped off her skirt and her underwear, and raped her, holding her down and grabbing her hair. The second officer is also alleged to have raped her. According to X, they then threw her on the ground and said, "That's what you deserve," and left her there.

[END BOX]

Sexual harassment, assault and rape by police of LGBT people have been reported from many major US cities. The reports show how, far from protecting the rights of LGBT people, police officers in many parts of the USA are using their positions of power and privilege to coerce people into having sex and to evade prosecution for attacks, some of which involve intense violence. Under international law, the rape of a prisoner by a state official is considered to be an act of torture.

[BOX]

A lesbian told AI in February 2004 that she was pulled over by police as she was driving one evening. She reported, "They patted me down, spending too long in the wrong places. Then I was told to lay on my stomach on the ground. They were asking me if I would like to know how it felt with a man. I was asked by one of the officers if I had a "hot babe girlfriend" that I could call to meet us for "fun". When I tried to report them, I was laughed at and asked to leave.

[END BOX]

## Physical abuse

[BOX]

On 13 August 2001, Jeremy Burke, a transgender man, was refused entry to his partner's home by a housing authority security guard who cited a policy that residents must come down to the lobby to admit a visitor. He reportedly attempted to explain that his partner was ill and needed the medication he brought for her. According to Jeremy Burke, the security guard then shoved him into the elevator. Approximately 15 minutes after he arrived at his partner's apartment, three police officers came to the door, entered the apartment and pulled Jeremy Burke out of a chair. They allegedly carried him into the hallway, and started punching him in the face, chest and eyes. His head was reportedly slammed into the floor and wall. The police report — which consistently uses the wrong pronouns, referring to Jeremy Burke as a woman — alleges that he attempted to strike and later to bite one of the officers, but was subdued. He was arrested on charges of assault, battery, resisting arrest and trespassing and taken to the police station, where he alleges he was subjected to humiliating and transphobic verbal abuse and medical neglect. Jeremy Burke was vomiting bile and blood for several days after the beating. After three days, he was taken to San Francisco General Hospital where it was discovered that his kidneys were injured from the beating and he was bleeding internally. Reportedly, his black eye and bruises were visible and documented. All charges against him were eventually dropped, except that of trespassing. In July 2003, Jeremy Burke filed a civil suit against the City and County of San Francisco. His lawyer told AI in July 2005 that the case was scheduled to be heard in November 2005.<sup>20</sup>

[END BOX]

Police brutality and use of excessive force has been one of the central themes of AI's work against human rights violations in the USA. In recent years, AI has campaigned to expose patterns of ill-treatment including police beatings, unjustified shootings and the use of dangerous restraint techniques to subdue suspects. The UN Human Rights Committee has also expressed its concern "at the reportedly large number of persons killed, wounded or subjected to ill-treatment by members of the police force in the purported discharge of their duties."<sup>21</sup>

[QUOTE]

"It's easier to thump a faggot than an average Joe. Who cares?" Los Angeles Police Department officers, cited in the Christopher Commission Report<sup>22</sup>

[END QUOTE]

Many lesbians have been subjected to violence by law enforcement officers because of their sexuality, particularly those whose gender expression differs from social norms. Rebecca Young from the National Drug Research Institute told AI that women perceived as "masculine" are assumed to be non-compliant and to resist arrest and they are generally treated with greater physical harshness.

Although a significant proportion of reports of physical abuse of LGBT individuals received by AI involved members of racial or ethnic minorities, there have been few specific studies of police abuses against this group.

[BOX]

"When I came out as a transsexual, I went from a \$100,000 a year job to homeless and on welfare in less than two years. After a disagreement over one of my welfare payments, the police arrived at the welfare office... One officer got in my face with the most vile insults I could imagine, his buddy stood nearby, night stick in hand ready to strike. The other two watched uncomfortably nearby... The anger and hate directed at me was more intense than I could describe. I thought I was going to be killed right in front of welfare... Finally, I collapsed. Between the pain of the blows and the mental distress I broke down. I curled up in a fetal position on the sidewalk ... I sent letters explaining the incident to the State Attorney General, the welfare board, the Mayor and the Chief of Police, to no avail. I learned, however, that it is perfectly legal to discriminate against transsexuals in countless ways. Go figure. That is when I decided to become an activist – abuse can be very inspiring ... I will never forget to fear the police. I will always mistrust the system..."

Rachel Thompson, 23 February 2004

[END BOX]

[PHOTO CREDIT]

© Lisa Cross

[END PHOTO CREDIT]

Transgender women from racial or ethnic minority groups and transgender men and women who do not pass for men or women respectively are at particular risk. The Ella Baker Center and TransAction in San Francisco have noted that some of the worst incidents of police misconduct are targeted at immigrant transgender women.<sup>23</sup>

[BOX]

On 31 July 2001, two heterosexual male Canadian tourists allege that they were verbally and physically abused by the San Antonio Park Police because they were perceived to be gay. They were reportedly handcuffed, beaten, bruised, and dragged face-first on the concrete by Park Rangers while being called Canadian “faggots”, and subjected to homophobic verbal abuse.<sup>24</sup> After this incident it was discovered that the officer involved was previously stationed in another district in Texas and that while on duty there he was investigated several times for alleged excessive use of force; he was ultimately forced to resign from the department.

[END BOX]

[BOX]

A self-described “multiracial” lesbian in California told AI she was physically abused by police officers on 5 May 2003 after police arrived at their home in response to an altercation involving her partner and a contractor on their property. She told AI that although the situation was calm, the moment she told an officer that she needed to go and help her lover who was sick, the officer suddenly grabbed her arm forcefully from behind, forcing her arm straight back and twisting it up at the wrist, wrenching her arm “as if it was going to pull out of the socket.” When the woman attempted to break free, she was thrown to the ground and reportedly held in a chokehold.<sup>25</sup> She told AI that one of the officers forced down her pants and exposed her buttocks. Reportedly, one of the officers also kicked her in the back, and two others hit her on the side of the face so that her head hit the

pavement. She told AI that she couldn't breathe, began to black out and that she went into convulsions. To AI's knowledge no official complaint was made and no investigation was undertaken into the officer's conduct. The woman and her partner have since reportedly moved to another area for fear of reprisals by the local police.

[END BOX]

## **Verbal abuse**

[QUOTE]

"When I told them my real name, Rachel, they refused to recognize that and continued to call me by my male name... The State Troopers tried to keep their smirks and comments at a distance, but I still heard words like 'fag' and 'freak' a number of times."

Rachel Thompson, Lehigh Valley, Pennsylvania, March 2004

[END QUOTE]

LGBT victims of police abuse and LGBT activists interviewed by AI stated that homophobic and transphobic verbal abuse by police was a serious problem. It is difficult to assess the true scale of the problem because there is very limited capacity to document alleged abuses so they are likely to be under-reported.<sup>26</sup> However, the evidence which is available suggests that verbal abuse by police officials is widespread. In a 2001 survey of 244 transgender women in Los Angeles, 37 per cent of respondents reported that they had been verbally abused by a police officer on at least one occasion.<sup>27</sup>

However, there have been a number of scandals involving homophobic and transphobic verbal abuse by law enforcement officers. For example, in the District of Columbia in 2001, police officers were found to have been sending racist, homophobic, and sexist e-mails through their patrol car computer systems. Metropolitan Police Department Executive Assistant Chief Terrance Gainer reportedly observed, "There appear to be significant numbers of people who are either ignorant or racist or homophobic or a terrible combination of all three."<sup>28</sup>

Verbal abuse against LGBT individuals violates the right every human being has not to be subjected to cruel, inhuman and degrading treatment.<sup>29</sup> It also violates the right to be

treated with dignity by law enforcement officials.<sup>30</sup> Widespread verbal abuse of the kind reported here, unless challenged by those responsible for overseeing police behaviour, can create a culture where discrimination and prejudice are seen to be the accepted norm. It can also create a culture of violence and abuse which risks spilling over into physical abuse.

[BOX]

What needs to be done?

1. Federal, state and local authorities should ensure that all allegations and reports of police abuse and misconduct are promptly and impartially investigated. All officers responsible for abuses should be adequately disciplined and brought to justice. If convicted, they should face penalties commensurate with the seriousness of the crime. The US government must ensure that the victims receive fair and adequate reparations, including compensation.
2. The US government must publicly recognize that rape by law enforcement officials constitutes torture and will not be tolerated. Sexual abuse is a form of ill-treatment that includes the deliberate use of body searches to degrade or humiliate and the use of sexually explicit language. Authorities must take positive measures to prohibit and prevent rape and sexual abuse and to respond adequately to these crimes, regardless of where they take place.
3. US law enforcement officials should use force only when strictly necessary and only to the extent required for the performance of their duty. If the use of force is unavoidable, they must exercise restraint; act in proportion to the seriousness of the offence; minimize damage and injury; and respect and preserve human life. All allegations of possible excessive use of force by police should be subject to prompt, thorough and impartial investigation.
4. It must be made clear to police officers that verbal abuse based on real or perceived sexual orientation or gender identity or expression will not be tolerated and that officers responsible for such abuse will be disciplined appropriately. Officers should address transgender individuals by the name they regularly use.

[END BOX]

## **Chapter 3**

### **Abuses in police detention**

[CAPTION]

A police cell, New York. LGBT people detained in police cells and jails are at risk of verbal, physical and sexual abuse both from law enforcement officials and fellow inmates.

© Larry Towell/Magnum Photos

[END CAPTION]

## **Abuses in police detention**

[QUOTE]

“Pat down searches rarely seem to be about weapons or safety and more often seem to be about ‘gender checks’. They usually involve the officer groping a person’s groin and/or breasts in an effort to ‘figure things out’. Some male cops are curious or fascinated about transgender women.”

Chris Daley, Transgender Law Center, San Francisco, 27 October 2003

[END QUOTE]

LGBT people held in police precinct holding cells are at risk of cruel, inhuman and degrading treatment. AI has received reports of officers “searching” LGBT individuals in ways that amounted to sexual harassment and abuse and subjecting LGBT detainees held in police stations or jails to verbal, physical and sexual abuse. Some LGBT people have also been placed in dangerous situations while in detention. In particular, transgender individuals are often placed in holding cells according to their biological sex, rather than their gender identity or expression, placing them at greater risk of abuse by other detainees.

## **Detention policies and procedures**

The placement of LGBT individuals in relation to other detainees has an important impact on the extent to which their dignity and safety can be ensured. This is especially so for transgender individuals who are at particular risk in gender-segregated detention facilities. LGBT detainees have been verbally, physically and sexually abused by fellow inmates. In some cases it appears that officers did not take appropriate measures to ensure their safety or failed to intervene in dangerous situations. In some instances reported to AI, officers have contributed to an atmosphere conducive to attacks against LGBT individuals by “outing” LGBT people to other detainees, conducting degrading searches in plain view of others, or verbally abusing them. AI’s findings indicate that transgender detainees are at

high risk of violence from other prisoners; transgender women in particular may be at heightened risk of torture or ill-treatment if they are placed in male jails or holding cells.

Seventeen of the 29 police departments that responded to AI's questionnaire said they had no policy on the detention of transgender people. Police authorities in the USA generally place transgender individuals into male or female holding cells based on their biological sex. In some cases transgender individuals may be held in separate holding cells.<sup>31</sup>

Police and prison authorities, as agents of the state, have a responsibility to protect inmates from violence at the hands of other detainees and prisoners. Institutional discrimination and prejudice in society at large against LGBT individuals mean that police and prison officials are often able to commit, encourage or ignore abuses against LGBT individuals, secure in the knowledge that they will not be held to account. One of the consequences of this climate of impunity is that people whose rights have been violated are frequently silenced.

[CAPTION]

Cells in a county jail, Oklahoma, April 2002. AI has documented poor hygiene and lack of access to toilets, running water and medical attention in police cells and jails.

© AP Photo/J. Pat Carter

[END CAPTION]

[BOX]

Patti Shaw, a transgender woman, was arrested following a domestic dispute in 2003. She had undergone sex-reassignment surgery and had been issued with identification that had been legally corrected to reflect her gender. However, the authorities determined that they had no procedure for changing her gender from male to female in the court's criminal record system and reportedly placed her in a male cellblock. In the courthouse cellblock male prisoners allegedly subjected her to systematic sexual harassment – including verbally abusing her, lifting up her skirt, exposing their penises and masturbating in front of her; they also reportedly sexually assaulted her. The guards allegedly did nothing to intervene and protect her.

[END BOX]

In New York, activists reported that conditions of detention were a significant factor in encouraging transgender individuals to plead guilty. They stated that conditions in holding cells are often so dangerous, and failure of officers to prevent abuses so pervasive, that transgender individuals are sometimes willing to have a criminal record for an offence they did not commit rather than run the risk of being detained pending trial.

[CAPTION]

Human rights activists, New York, 2004.

© AI

[END CAPTION]

## **Segregation**

Segregating detainees who may be at risk of abuse by other detainees is a solution reportedly adopted by some authorities. It is important that segregation, however well intentioned, should not have the effect of further marginalizing and stigmatizing LGBT individuals or putting them at risk of torture or ill-treatment. The line between prisoner protection and discrimination is easily blurred and prison officials can sometimes conceal discriminatory behaviour. Some campaigners have voiced concerns that housing LGBT individuals in administrative segregation may mean that they are housed in punitive conditions.

In Los Angeles a special unit, known as K-11, was created for LGBT and HIV positive individuals. Whilst linking LGBT people with HIV in this way is problematic, the K-11 unit represents an improvement over previous conditions for LGBT detainees in Los Angeles. The authorities in Los Angeles told AI that a careful screening process was implemented because individuals who are not lesbian, gay, bisexual or transgender attempt to gain placement in the K-11 cell because it is perceived to be safer. The vigorous screening process has reportedly resulted in humiliating, degrading and potentially dangerous situations. For example, in late 2003, officers reportedly denied a request by an African-American gay man to be placed in the K-11 cell, because he did not conform to the stereotype of a gay man. AI also heard from a transgender woman who reported that she

was questioned extensively about gay male issues and concepts with which she was unfamiliar. She explained she had no knowledge of such issues, because she is transgender, not gay; she was placed with the general population.

Holding cells often have fewer amenities and services than long-term detention centres owing to their transitory nature. While AI is not aware of any national study on holding cells, local investigations have revealed serious lapses, for instance poor hygiene and lack of access to toilets, running water and medical attention. Such conditions violate the UN Standard Minimum Rules for the Treatment of Prisoners.

[BOX]

Dean Spade, a transgender man who works as an attorney and heads the Sylvia Rivera Law Project, a legal advocacy group for transgender and gender-variant people in the USA. He was arrested in 2002 by a Port Authority police officer while using the men's room at Grand Central station, New York. "I entered a restroom, a cop followed me into the restroom and asked me to show ID. I explained that I was in the right restroom." When two friends came to his assistance, the officer detained them and, finally, arrested all three of them. "The cop was really being aggressive," Dean Spade said. "We tried to leave and he pushed us against the wall... We spent 23 hours in jail and ultimately the charges were dropped because there was no legal basis for our arrests."

Interview with Dean Spade, 29 September 2004

[END BOX]

[CREDIT]

© Rania Spade

[END CREDIT]

Some LGBT detainees have experienced great difficulty in accessing medication while in police holding cells. AI is concerned by reports that transgender individuals have been prevented from receiving hormone-related medication and denied access to personal items related to their gender identity or expression.<sup>32</sup> This would include, for example, allowing transgender people to keep their wigs and make-up in detention.

A recent pilot study of the provisions for transgender people in the criminal justice system

in the UK recommended as a best practice that the authorities should ensure the right to reasonable expression of the personal sense of gendered self and appropriate related appearance, and the ability to commence or continue medical therapy and surgical procedures while in detention.<sup>33</sup>

[BOX]

An African-American transgender woman (name known to AI) reported that after she was arrested, police officers repeatedly gathered round her making comments such as “do you know what that is?” She reported being searched three times, including at the processing centre, where one of the arresting officers searched her vaginally. She told AI that she suspected that the search was to find out about her sex and for the benefit of curious officers, rather than for a legitimate purpose.<sup>34</sup>

[END BOX]

## Searches

Searches by law enforcement officials can take a number of different forms, from a pat search,<sup>35</sup> to a strip search or body cavity search. Reports to AI indicate a pattern of searches involving inappropriate touching of the detainees’ genitalia. Often such “checks” appear to be carried out in order to establish a transgender individual’s biological sex.

The UN Human Rights Committee has stated that a body search by a state official should only be conducted by someone of the same sex.<sup>36</sup> This is to ensure protection of the dignity of the person being searched. In the USA, courts have taken different views about the legitimacy of cross-gender pat searches; thorough pat searches require some contact with the genital area even though the individual is still clothed.

Less than 25 per cent of those who responded to AI’s survey of police departments had policies regarding strip searches of transgender individuals.<sup>37</sup>

[QUOTES]

“If you tell the officer you want a woman to search the top and male to search the bottom, we’ll accommodate you as best possible.”

Deputy Inspector June Roberts, NYPD, March 2004

“Searches are based on biology regardless of what they think they are.”

Deputy Inspector Douglas Rolston, NYPD, March 2004

“It would depend on what the officer believed at the time... [an individual] may be dressing like a female, but if I know you're male I'm going to search you.”

Deputy Chief Jeffrey Page, of the Resource Management Division of the San Antonio Police Department, December 2003

“If they are dressed as a female we are calling a female officer.”

Chief Ortiz, San Antonio Police Department, December 2003

[END QUOTES]

Generally, however, the policy of law enforcement agencies appears to be that transgender individuals should be searched by officers of the same biological sex. In other words, a transgender woman, who has not undergone sex reassignment surgery, will be searched by a male officer and a transgender man who has not undergone sex reassignment surgery will be searched by a female officer.

Repeated and unnecessary searches of transgender individuals in police custody, by both police officers and medical professionals, have been reported. Some of these searches amount to sexual abuse and gross infringements of the right to privacy and dignity. There are reports of officers using sexually offensive language; of male staff touching transgender women's breasts and genitals; of female staff touching transgender men's genitalia; and of male or female staff and other detainees watching transgender detainees while they are naked.

[BOX]

What needs to be done?

1. The authorities should review their detention policies and practices for LGBT individuals and bring them into line with international standards, including the requirement to ensure the safety and dignity of individuals in detention.
2. A transgender individual's opinion about whether it would be safest to detain them in a men's or a women's detention facility must be a central consideration in decisions

about housing transgender detainees. The authorities should consult transgender organizations to identify best practice for policies on making housing decisions in a detention facility.

3. If safety concerns require that lesbian, gay, bisexual or transgender people be held separately from other detainees, they must be afforded the same degree of access to resources and services, including toilets and other facilities.

4. Transgender individuals should not be searched solely in order to challenge their gender identity. If a search is necessary, it should be carried out in private with full regard to the dignity of the person being searched. If the person is transgender, the search should be carried out by two officers of the gender(s) requested by the individual. If a transgender individual does not specify a preference, then the search should be conducted by officers of the same gender as the detainee.

[END BOX]

## Chapter 4

### Policing crimes in the community

[CAPTION]

A young homeless man at the piers in Manhattan's West Village, New York, 1998. Many of those who hang out at the piers are young LGBT people. It has been estimated that in some US cities up to 40 per cent of homeless youth are gay, lesbian, bisexual or transgender.

© Michelle V. Agins/New York Times Photo[END CAPTION]

## **Policing crimes in the community**

[BOX]

A gay Latino man was found dead in his apartment in the Bronx, New York, in August 2002. Reports indicate that he had been stabbed 46 times and asphyxiated. Homophobic graffiti was apparently written on the walls. Among concerns about police conduct of the case was their failure to post an “information wanted” notice until January 2003 – five months after the murder. An activist told AI that they met with the community affairs officers at New York Police Department (NYPD) to obtain updates but it did not appear that any real work was being done in terms of investigating the case. He said that, in his view: “If the victim was not Latino and gay, more would have been done.”<sup>38</sup>

[END BOX]

Sometimes, as we have seen in previous chapters, the forces of the state are the direct perpetrators of crimes of violence. In other cases, they bear responsibility because they fail to respond appropriately to crimes against LGBT people and so help encourage and sustain such abuses.

States have an obligation to take steps to stop not only the violence itself but also the discrimination that gives rise to it.<sup>39</sup> Wherever systemic discrimination is allowed to take root, it fosters violence against LGBT people. The fact that such acts are perpetrated by private individuals rather than agents of the state does not absolve the authorities of their responsibility. Under international human rights standards the authorities are required to show due diligence in protecting and promoting human rights within their jurisdiction.

The concept of due diligence describes the threshold of effort which a state must undertake to fulfill its responsibility to protect individuals from abuses of their rights.<sup>40</sup>

Due diligence includes:

- taking effective steps to prevent abuses;
- investigating abuses when they occur;
- bringing the perpetrators to justice in fair proceedings;
- ensuring adequate reparation, including compensation and redress; and

- ensuring that justice is dispensed without discrimination of any kind.

The failure of the state to fulfil these obligations can take various forms including:

- inadequate preventive measures;
- police indifference to abuses;
- bias in the court system; and
- a failure to define abuses as criminal offences.

In many parts of the USA the authorities are failing to act with due diligence to prevent and investigate crimes against LGBT people. AI's research has revealed a pattern of police failure to respond appropriately to crimes against LGBT individuals. Issues of race and class and the extent to which an individual's appearance challenges gender stereotypes seem to increase the likelihood that police will fail in their duty to exercise due diligence.

[BOX]

Gwen Araujo, a young transgender Latina woman, was murdered in California in October 2002 after acquaintances at a party learned that she was transgender. She was kicked and beaten with a soup can and iron skillet, smashed with a shovel and strangled with a rope. According to court testimony, at one point, Gwen Araujo was punched so hard in the face that a wall behind her head "indented and cracked." Her body was then driven into the Sierra Nevada Mountains and buried in a shallow grave. Three men were convicted in connection with the killing of Gwen Araujo.

© Courtesy of the Araujo family

[END BOX]

[BOX]

Several youths drove by a Latina transgender woman in their car in 1999, stopped, and attacked her, stabbing her and beating her with a baseball bat. When Los Angeles Police Department (LAPD) officers responded, they reportedly focused on determining the woman's "real" gender. They demanded her driving licence, which identified her as female, but refused to accept this documentation. Officers allegedly demanded that responding paramedics examine her to confirm that she was male. The paramedics refused to do so. Police also reportedly harassed witnesses to the crime, many of whom were also transgender women, inquiring about their immigration status.<sup>41</sup>

[END BOX]

Police lack of understanding, or in more extreme cases hostility, has resulted in officers arresting the victims of the crime rather than the perpetrators. Some survivors have been coerced into withdrawing complaints. In other cases police have dismissed the fears expressed by LGBT people and left them unprotected, sometimes with fatal consequences. The result is that many LGBT people are denied equal access to justice.

### **Fear of reporting crimes**

One of the most striking aspects of crimes against LGBT individuals is the extent to which these crimes go unreported. LGBT people often do not report crimes against them because they fear a dismissive, hostile or abusive response from the police. This reluctance is particularly pronounced among transgender women.

LGBT individuals also fear that if they reveal their sexual orientation or gender identity to the police, this information could find its way to family, friends and employers.<sup>42</sup> Given social attitudes towards the LGBT community in society at large, this is a serious consideration for many. Some LGBT individuals who are survivors of domestic violence reportedly hesitate to contact law enforcement officials for fear of being arrested, or because they worry about how their partner would be treated in police custody.

Under-reporting, coupled with police response to those reports which are made, means that people who commit crimes against LGBT individuals in the USA tend to get away with it. One of the key factors in breaching this climate of impunity is to ensure that police officers are adequately trained to respond appropriately to crimes against LGBT people so that victims are encouraged to come forward, confident in the knowledge that the justice system will work for and not against them.

Over past decades, the problem of violence motivated by prejudice in the USA has resulted in the introduction of “hate crime” legislation. This legislation may make a criminal act motivated by discrimination a distinct crime in the criminal code, or it may increase penalties for a crime when it is motivated by discrimination. On 14 September 2005, the US House of Representative passed a federal “hate crime” bill which covers crimes targeting people because of their sexual orientation or gender identity – a major legislative advance.

Legislation on “hate crime” enacted by individual states and cities provides for substantial variation in the degree and nature of protection available. Although some states and local authorities have taken legislative steps to address crimes motivated by discrimination, many of these laws do not cover gender identity or sexual orientation. AI found that of 46 states which have enacted laws against crimes motivated by discrimination, only 33 cover sexual orientation<sup>43</sup> and 10 cover gender identity/expression.<sup>44</sup> Many jurisdictions have increased penalties for crimes motivated by discrimination. State statutes may also include a range of provisions requiring the collection of statistics on such crimes or requiring training for law enforcement personnel to properly identify and investigate “hate crime”.

In 2003 the Federal Bureau of Investigations (FBI) reported that “hate crime” committed on the basis of sexual orientation accounted for 1,430 (19 per cent) out of the 7,489 reported “hate crime” incidents. However, the FBI depends on local law enforcement agencies to report incidents to it and many agencies fail to do so.<sup>45</sup> In 2003 the National Coalition of Anti-Violence Programs (NCAVP) received 2,051 reports of anti-LGBT incidents from just 28 locations.<sup>46</sup>

AI’s survey revealed that more than a quarter of police departments who responded do not have systems in place to track and document crimes where the victim is targeted because of their sexual orientation. Documentation of “hate crime” based on gender identity or expression is also inadequate. The organization Remembering our Dead has documented 92 bias-motivated murders of trans-gender people in the USA since 1998.<sup>47</sup> The federal government has collected data on the number and type of “hate crimes” occurring in the USA since 1990 and the FBI collects information on crimes motivated by homophobia. In the past the FBI has not monitored “hate crime” on the basis of gender identity or expression. However, this may change as a result of the passage of the Local Law Enforcement Hate Crimes Prevention Act in May 2005.

[CAPTION]

Sergeant Brett Parson, head of the Gay and Lesbian Liaison Unit in Washington D.C., at the launch of AIUSA’s report, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* in September 2005.

© davidberkowitz.com.

[END CAPTION]

Efforts to respond to and prevent violent crime against LGBT individuals are hindered by the lack of documentation and coordination between federal, state and local agencies and community groups. Nevertheless, despite the absence of systematic and consistent monitoring, a picture is emerging of widespread abuses against LGBT individuals. In Chicago<sup>48</sup> in 2003 and Los Angeles<sup>49</sup> in 2002, for example, LGBT people were the second largest group targeted for “hate crime”; in both cities only racially-motivated crimes were more prevalent in this category of offence, according to official statistics.

The likelihood of LGBT individuals being targeted for violence also depends on such factors as gender, race, age, ethnicity and immigration and economic status. Fifty-one per cent of LGBT individuals reporting “hate crime” to the NCAVP in 2003 were members of racial or ethnic minorities.<sup>50</sup> LGBT immigrants may also be targeted because of xenophobia, particularly in the aftermath of the attacks on 11 September 2001.<sup>51</sup> In Los Angeles in 2002, the majority of “hate crimes” reported against transgender individuals were committed against low-income transgender women from ethnic minorities, in areas known to be frequented by street-based sex workers.<sup>52</sup> Nevertheless, AI has found that “hate crimes” motivated by more than one prejudice mostly go unrecorded or are incompletely recorded. In fact, the FBI only recorded three such crimes in 2002.<sup>53</sup> In addition, some civil rights organizations have noted that “hate crime” statistics and prosecutions rarely, if ever, include crimes perpetrated by law enforcement or other government agents.<sup>54</sup>

[BOX]

April Mora, a young lesbian of African-American and Native American heritage, was reportedly attacked in Denver, Colorado, in March 2002. Four men allegedly jumped out of a car and slashed her with razor blades — carving “dyke” into her forearm, and “R.I.P.” onto her stomach. Of the police response, April said: “They just think that I did it to myself... I think they’re saying that, because I choose to look like this I deserve it or something. It’s as if — if I want to look like a guy, I should get beat up like a guy.” April’s girlfriend’s mother reported: “One police officer was so rude... when they first pulled up, they were asking my daughter if [she and April Mora] had been fighting... They asked April how many drugs they were on. They tore my room up searching for the blade and a bloody shirt. They said they were looking for a razor blade and that the wounds looked self-inflicted.”<sup>55</sup> April Mora said: “I’m black and Indian, but I look Chicano. I think if we were

white, the cops and people would treat us differently.”<sup>56</sup>

[END BOX]

## **Police failure to respond**

Police response to reports of crimes against LGBT people reportedly varies by neighbourhood. Incidents in more affluent communities receive better responses than those which take place in poorer, ethnic minority communities.

## **Identifying the crime**

[BOX]

Al Everton, a 74-year-old gay man, died in October 2003 in San Antonio, Texas, reportedly after being struck on the left temple with a baseball bat. Before he died, Al Everton identified his attacker to family, friends and the authorities and said that the man had shouted homophobic abuse as he beat him with the bat. The alleged attacker had reportedly had previous scuffles with Al Everton and his partner and made homophobic remarks. Al Everton had initially refused to go to the authorities because he did not want the police to know that he was gay. The crime was never investigated as a “hate crime” or as a homicide and no charges were filed. The authorities claim that a row was the motive for the beating, whether or not the attacker used homophobic abuse while hitting Al Everton with the bat.<sup>57</sup> Al Everton’s partner tried to contact the local FBI field office and was reportedly told, “If he’s not a woman we cannot do anything about it.” The case has reportedly now been labeled “cold” (closed).

[BOX]

Law enforcement officers frequently fail to identify crimes motivated by discrimination properly. This may be the result of inadequate training and expertise or an over-reliance

by officers on survivors to identify the motive of the crime. Officers should be trained in how to exercise appropriate sensitivity in situations where LGBT individuals may not feel it is safe to bring their sexual orientation or gender identity to the attention of the police.

AI received reports that police officers had failed to investigate reports that several lesbian women were targeted and raped by men in San Antonio. When asked about these allegations, San Antonio Police Department (SAPD) Chief Ortiz indicated that a victim's sexual preference would not be part of the police report unless the victim raised it.<sup>58</sup>

Campaigners have expressed concern that the failure to consider how the sexual orientation of the rape survivors may have impacted on such crimes could have hindered the investigation.

An indication of “mixed motives” for a crime – for example if there was homophobic abuse but the victim was also robbed – often means that any discriminatory motive for the crime is discounted.

In Illinois, an amendment to the Hate Crime Statute came into force in 2003. It states that the existence of other motives is immaterial.<sup>59</sup> However, in other jurisdictions “mixed motive” issues remain a concern. Chief Ortiz of the SAPD told AI that if homophobic abuse is used where “the alleged perpetrator called the victim ‘queer’<sup>60</sup> and all that good stuff then it's not a hate crime, but if they say the perpetrator was lying in wait and then beat me when I came out of a gay bar, then we would investigate it as a hate crime.” Three murders were reportedly committed within a one-mile radius of the area's gay club scene in 2002. The SAPD has reportedly taken the view that the crimes were motivated by robbery and not linked to each other.

[BOX]

### Making progress

AI welcomes the initiatives by some US police departments or precincts within larger police departments to improve police response to crimes motivated by discrimination.

In Chicago police bike patrols were introduced in 2002 in the Lakeview district, an area frequented by young LGBT people. While campaigners note it is difficult to measure the exact impact of the bike patrols, reported “hate crimes” fell by 50 per cent in the first year.<sup>61</sup> The bike patrols reportedly have also had a positive impact in terms of outreach between Chicago police and the LGBT community.

LGBT organizations and advocates in Washington D.C. have praised individuals involved and the extensive outreach conducted by the Gay and Lesbian Liaison Unit (GLLU), under Sergeant Brett Parson, who reports directly to the Police Chief. A transgender woman who works as an advocate told AI that the unit “engages marginalized people and the LGBT community organizations in this city like no one ever has”.

In some cities, centralized units have been set up in order to develop expertise in how to handle crimes motivated by discrimination. Marshall Wong of the Hate Crimes Reporting Unit of the Los Angeles Human Rights Commission told AI that centralized units are “the best way to have accountability for investigations and training issues.”<sup>62</sup> An LGBT liaison unit has been added to the San Antonio Police Department which is reported to be undertaking outreach activities with the LGBT community.

In West Hollywood, Los Angeles, police monitor patterns in complaints which are homophobic or racist in nature, but do not amount to the level of a “hate crime”. The authorities maintain this approach has had some success in intervening against potential “hate crime”. Such initiatives could be an important step towards meeting obligations to prevent crimes against LGBT people.

Authorities in West Hollywood have also attempted to establish contacts with campaigners in the transgender community. It is now common practice for transgender activists to be contacted whenever a “hate crime” against a transgender individual is reported. This is reportedly having a positive effect on relations between the police and the LGBT community, which in turn is producing positive results in terms of investigating and prosecuting crimes.

[END BOX]

## **Targeting the victim**

[BOX]

An Asian Pacific Islander transgender woman reportedly complained to the Internal Affairs Bureau (IAB) that Los Angeles police officers responding to a “hate crime” committed against her refused to take pictures of her injuries. The IAB officer allegedly told her: “There’s nothing to report, the officers didn’t do anything wrong. You’re not a victim of

violence. If you didn't tell people you're a transsexual, people would leave you alone."<sup>63</sup>

[END BOX]

AI has heard of several cases where survivors of crimes motivated by homophobic or transphobic discrimination have been threatened with arrest or arrested. In some cases officers have reportedly suggested that the victims were in some way responsible for the crimes committed against them, for example, indicating that the person "asked for it," or "provoked" an attack. According to the NCAVP, the perception among police, prosecutors and judges that victims somehow "deserve" what happened to them is "one of the most formidable barriers to bringing hate crime offenders to trial."<sup>64</sup>

### **Violence in the home**

Violence in the home is a serious problem in the USA for both heterosexual and same-sex couples. Knowledge about LGBT domestic violence is minimal and survivors experience extreme isolation – a problem exacerbated by the scarcity of programmes and resources that exist for LGBT domestic violence survivors.<sup>65</sup>

[QUOTE]

"I know we are supposed to be tolerant but that's a bunch of bull, they should all be killed."

Reported comment by a police officer in San Antonio responding to a same-sex domestic violence call<sup>66</sup>

[END QUOTE]

[BOX]

Marc Kajs, a 28-year-old gay man from Houston, Texas, was shot to death by his former lover after a history of threats and domestic violence. In a lawsuit filed against the City of Houston, Marc's mother asserted that he had, "sought protection from the police several times before the shooting but was turned away by officers." Marc had "complained to the police five times but nothing was ever done," the family's attorney stated. In one instance Marc fled to a police station at 2:30am, followed by his ex-lover. Though his ex-lover threatened him in front of a police officer, Marc received no protection and "was sent out

onto the street with the person stalking him and threatening him.” Several days later, he filed a report at Houston’s Montrose storefront police station after receiving further threats against his life. Hours later, Marc was dead.<sup>67</sup>

[END BOX]

Individuals who come out to their families as lesbian, gay, bisexual or transgender, particularly young LGBT people, are often rejected, and in some cases subjected to violence at the hands of their families. In one survey of LGBT members of ethnic minorities, 61 per cent testified that they had been victims of violence by family members.<sup>68</sup> Rejection by family members is particularly problematic for young LGBT immigrants who may be dependent on family members for legalizing their immigration status. A Rhode Island study found that nearly half of young LGBT people end up having to leave their homes because of their families’ reaction to their sexual orientation or gender identity.<sup>69</sup> LGBT youth in the foster care system and homeless shelters reportedly experience verbal harassment and, in some instances, physical or sexual abuse because of their sexual orientation or gender identity.<sup>70</sup> NCAVP reports that older LGBT individuals are also at risk of violence at the hands of family or care-givers.<sup>71</sup>

AI’s research revealed that law enforcement responses to domestic and interpersonal violence involving LGBT individuals is inadequate and that police authorities are failing to act with due diligence to prevent and protect LGBT individuals from domestic violence.

Less than 20 per cent of the police departments who responded to AI’s survey reported that they had specific policies on dealing with same-sex domestic violence.<sup>72</sup> Several police departments reported that all domestic violence is treated equally and that officers use the same procedures in cases of LGBT domestic violence as in cases of heterosexual domestic violence to determine who is the aggressor.

[QUOTE]

“It’s really, really common for the victim to be arrested as the batterer.” Matthew Pulling, Staff Counselor, Stop Partner Abuse/Domestic Violence Program of the Los Angeles Gay and Lesbian Center, September 2003

[END QUOTE]

[BOX]

In September 2003, police in Los Angeles driving by while a homeless Mexican transgender woman was being abused by her boyfriend failed to intervene, despite her pleas for help. She was severely beaten, requiring medical treatment. When officers eventually responded, after being called by a member of the public, they reportedly arrested her boyfriend for drug possession, but did not charge him with assaulting her.<sup>73</sup>

[END BOX]

Reports from survivors and campaigners indicate that the training provided to police officers is inadequate to deal with domestic violence. For example, health workers in Chicago told AI that “police often do not know what to do” and that officers are often insensitive and exhibit a lack of understanding of power relationships inherent in domestic violence.

Campaigners told AI that police often do not take LGBT domestic violence seriously. Some activists report that when police respond to domestic violence involving lesbian couples, officers will simply “try to get the girls to calm down and get along”, or see it as a “fair fight”, failing to view such incidents as “real” domestic violence. Domestic violence involving two men is also often not taken seriously. In some cases, officers have reportedly told men that both would have to be arrested, and suggested that instead one of them should just leave. Activists report that officers respond in a way that would suggest that in their view men can fight their own battles and that police intervention is unnecessary.

[BOX]

In 2001, a young gay man in Los Angeles reportedly suffered a double compound fracture of the arm as a result of abuse by his partner, and was referred to the West Hollywood station by a medical service provider, only to be asked by the officer taking his complaint whether he had hit his abuser. When he responded that he had not, the officer allegedly stated: “Well, you know, if he says you did, we’re going to have to arrest you too. So as soon as you give me his name and address, we’re going to go out there, and if he says you even touched him, we’re going to arrest you too. And see that cell over there, that’s the cell you’re going to be in.” The young man left the station, and no report was taken. When later

asked why no report was taken, the officer reportedly said, “He refused to give us information.”

[END BOX]

Because of a misconception among many law enforcement officials that a determination of domestic violence is based primarily on the sex of the people in the couple, many simply assign the label of mutual abuse and arrest both parties in a situation involving violence in an LGBT relationship. Gay men and “masculine appearing” lesbian couples are reportedly particularly at risk of being arrested under an assumption that the situation involves what is sometimes characterized as “mutual combat”.

AI research revealed serious concerns about the San Antonio Police Department’s response to domestic violence, including that the SAPD appears to have an unwritten policy to threaten survivors of domestic violence with arrest if they repeatedly call for assistance. This was confirmed by Chief Ortiz, who told AI that officers use threat of arrest as a “tactic in combative relationships.”<sup>75</sup> When police do attempt to identify the abuser in an LGBT domestic violence situation, reports suggest that factors such as race and class affect who is perceived by officers to be the abuser.

In Los Angeles, the Los Angeles Gay and Lesbian Center’s Stop Partner Abuse (STOP)/Domestic Violence Program has found the erroneous arrest of survivors of LGBT domestic violence to be so prevalent that it maintains a support group for LGBT survivors of domestic violence who have been referred by the courts for assessment and treatment as offenders (mandatory batterer’s intervention programmes).

[BOX]

A gay Filipino survivor of domestic violence living in Los Angeles was reportedly beaten on several occasions by his partner, a white US citizen who was reportedly addicted to drugs and alcohol. When police responded to one altercation, they reportedly arrested the Filipino man and threatened to report him to the immigration authorities, saying: “You’re not a citizen. We should deport you, you shouldn’t be hitting Americans; you’re not an American.” The Filipino man was sentenced to 52 weeks of batterer’s intervention.<sup>74</sup>

[END BOX]

Nearly three quarters of the police departments who responded to AI's survey reported that they have mandatory arrest policies which require officers to make an arrest when responding to a domestic violence call. In the absence of training that enables an officer to make an appropriate assessment as to who should be arrested, this requirement may lead to prejudiced police responses. Language barriers can also present significant problems for the immigrant population. Abusers who speak better English are reportedly more likely to be believed by police officers, leading to arrests of the victim. AI also heard reports of officers using the abuser to translate for the survivor.

[BOX]

A Latina woman living in Chicago was arrested and sentenced to undergo counselling after her partner called the police, claiming she had been abused. The Latina woman had reportedly been beaten by her partner over a period of time, and neighbours had repeatedly called the police, who usually did not intervene. Despite this long history of abuse, when the police finally took action it was to arrest the long-term victim. An LGBT domestic violence activist told AI that the abusive partner was fluent in English and was for that reason taken more seriously by police. The victim was monolingual Spanish and unfamiliar with her rights in the USA and so was "unable to defend herself verbally with police. As with most same-sex domestic violence cases the police assume both parties liable, and the one that can speak up and makes the first accusations is considered the victim."<sup>76</sup>

[END BOX]

Police should be trained to undertake a more sophisticated and thorough assessment when responding to an LGBT domestic violence incident. The imbalance of power, which is at the centre of domestic violence, is built and maintained not just on sexism but also on racism, xenophobia, ageism, and discrimination on the basis of class, community and occupational status.

Some police departments have responded to the call for improved service when responding to heterosexual domestic violence by creating specialized units or officers in domestic violence cases, and conduct outreach and work with survivors of domestic violence after the initial incident. Such units will only improve the treatment of LGBT survivors if the officers receive appropriate training.

[BOX]

What needs to be done?1. “Hate crime” statutes, where they exist, should address acts of violence or discrimination based on actual or perceived sexual orientation and gender identity or expression. All law enforcement authorities should undertake comprehensive data collection on such crimes based on sexual orientation or gender identity. Such documentation should include provision for documentation of violence based on multiple identity factors. Detailed and comprehensive statistics should be regularly published.

2. Law enforcement authorities must ensure that police officials are trained to protect those who are attacked verbally or physically on such grounds as gender, race/ethnicity, sexual orientation or gender identity. They should provide training to all police, both veterans and new recruits, to enable them to deal effectively with allegations of violence against LGBT individuals.

3. Law enforcement agencies should conduct prompt investigations into all reports of LGBT domestic violence. They should ensure that officers are thoroughly trained in how to investigate such allegations, including how to identify the abuser.

4. The US government should take steps to ensure it fulfils its obligation to act with due diligence to prevent and protect LGBT individuals from domestic violence. It should ensure that laws against family violence and abuse, including rape, sexual assault and other violence give adequate protection to LGBT individuals and respect their integrity and dignity.

[END BOX]

## **Chapter 5**

### **Profiling and selective enforcement**

[CAPTION]

Police arrest two women for allegedly trying to block the St Patrick's Day Parade in March 2001 in New York. The women said they were members of the Irish Lesbian and Gay Organization, which has often been banned from marching in the parade.

© AP Photo/Hank McManus

[END CAPTION]

## Profiling and selective enforcement

[BOX]

R. Boevingloh, a 60-year-old gay man, was arrested in a park in St Louis, Missouri, in June 2001. He told AI that he was wearing dark sunglasses, walking with a cane in one hand and a soft drink in the other when he greeted an undercover policeman as he walked by him. He was immediately handcuffed, put in a police car and subsequently charged with lewd conduct. At trial, the undercover policeman testified that Boevingloh had rubbed his crotch area and had made prolonged eye contact with the officer. Boevingloh was placed on two years' probation. He told AI: "I did nothing wrong, did not 'cruise' anyone, did not expose myself, did not hurt anyone and was targeted simply for being a gay male in a city park ... Nothing is more unfair than singling out a group and making them criminal when they are not." R. Boevingloh, February 2004

[END BOX]

Lesbians, gay men and transgender and bisexual people may be "profiled" or targeted for selective enforcement of regulations because they are all considered to have transgressed social norms. According to some activists, police responses and attitudes can be affected by the extent to which an individual's appearance differs from conventional norms. They also emphasize that stereotypes about gender may be compounded by presumptions of criminality based on factors such as race, age or socio-economic status. For transgender individuals, reports indicate that harassment is more severe the less a transgender woman or man passes respectively for a woman or man. The extent to which an individual "passes" can depend not only on their desire to undergo hormone treatment or sex reassignment surgery, but also on their socio-economic status and ability to afford medical intervention.

Policing practices can affect individuals in virtually every sphere of their daily lives and often have an impact that go far beyond the initial incident. The effects on LGBT communities of profiling or selective enforcement based on their sexual orientation, gender identity or expression include feeling humiliated, depressed, helpless and angry. Such practices also create fear and mistrust, and can result in a reluctance to cooperate with police officers.

[QUOTE]

“I know to be respectful to police officers but I’m tired of the way they are treating us.” Alixxa, a Latina transgender woman, reportedly apprehended and abused by San Antonio police in January 2004

[END QUOTE]

Comments made to AI by police officials suggest that there is a commonly held assumption that transgender individuals are sex workers. Community-based organizations and individuals reported that this profiling of transgender women as sex workers frequently leads to arbitrary arrest and detention. For example, LGBT rights activists in Chicago told AI that officers see transgender women as easy targets when they need to meet their allotted “arrest quota”.<sup>77</sup> AI received many reports of transgender women being stopped by police and asked about their reasons for being on the street when they were going about routine, everyday tasks like hailing a cab, shopping or walking the dog.

Vague laws are one of the factors that increase the likelihood of these sorts of arrests. They often involve offences such “loitering with intent to solicit”, “public lewdness” or “disorderly conduct”.

Many transgender individuals will apparently not challenge charges because pleading “not guilty” could mean spending time in detention where they would be at risk of torture and ill-treatment.<sup>78</sup> (See Chapter 3.) Transgender people can also face pervasive discrimination in securing legal counsel.

## **Policing public spaces**

[CAPTION]

“When a police officer sees a [heterosexual] couple making love, they are left alone on most occasions, but if gays are involved, they [police] are on them.”

Attorney in San Antonio, December 2003

[CATPION END]

The vagueness of morals regulations<sup>79</sup> in the USA can lead to arbitrary arrest and detention because of the discretion granted to officers in determining what is considered “offensive”. Individual judgements, made without the checks which clear legislation should provide, are open to immense influence from the prejudices prevailing in society – including homophobia, transphobia, racism and sexism. For example, AI received reports of targeted enforcement of morals regulations being used disproportionately against gay men in a number of cities and the California Supreme Court has noted that California Penal Code Section 647(a), which prohibits “lewd conduct”, has been selectively enforced against gay men.

[BOX]

California Penal Code Section 647(a) prohibits “lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.” Over the past decades, campaigners and courts alike have criticized the LAPD’s enforcement of public morals regulations as discriminatory, arbitrary and abusive with respect to gay men. However, discriminatory enforcement of such regulations in Los Angeles still appears to persist;<sup>80</sup> for example, the LAPD’s enforcement activities are reportedly concentrated at times when and in areas where gay men are thought to congregate. AI received reports that LAPD enforcement efforts were stepped up during the weekend of West Hollywood’s LGBT Pride festival in 2003, resulting in arrests of more than 40 men over the weekend, despite the fact that West Hollywood is technically outside the jurisdiction of the LAPD.

[END BOX]

Many, if not all, jurisdictions in the USA recognize public lewdness or indecency as a statutory offence. Some statutes prohibit specific sexual acts or “lewd or indecent conduct” generally in “a public place,” “in public,” or “in public view” while under other statutes it is enough that the act is intentional and offensive to one or more people present and as such it is not necessary that the act be committed in a public place.<sup>81</sup>

[BOX]

Following a lawsuit filed by Gay and Lesbian Advocates and Defenders on behalf of a gay man harassed by Massachusetts State troopers, the State Police issued new guidelines specifying that “socializing and expressions of affection” are not considered sexual conduct, and that public sexual conduct is not illegal unless there is a “substantial risk” that the conduct will be observed by a casual passerby.<sup>82</sup>

[END BOX]

AI’s research revealed a pattern of entrapment techniques, soliciting and inviting prohibited conduct used by police as part of undercover operations. The discriminatory aspects of such police operations create an atmosphere conducive to abuse.

Abuses involving park or transit police have also been reported, raising concerns of lack of training, supervision and accountability for officers charged with policing activities prone to misconduct, who do not have the experience or training of formal police departments.

“Sodomy” laws which are no longer in force are reportedly still being utilized against LGBT individuals in some areas. For example, a judge in Virginia sentenced a man to three years in prison in February 2004 for solicitation of “sodomy” after he was arrested for propositioning an undercover officer in a public toilet in Virginia Beach.<sup>83</sup> It has been reported that in New York 296 arrests between 1981 and 2001 were made under New York State’s law against consensual “sodomy”, although the law had been declared unconstitutional in 1980.<sup>84</sup>

Arrests are frequently based on evidence from police officers who are the only witnesses to the alleged offence. The use in these reports of standardized language which does not reflect the individual circumstances of the incident raises concerns about their veracity. In Detroit and Los Angeles, for example, LGBT rights defenders with access to a representative number of arrest reports have noted that reports bore a remarkable similarity; several reports in San Antonio reviewed by AI showed a similar uniformity of language and scenario.

Reports from several cities suggest that police operations against “lewd conduct” target places where members of the Latino, African American, South Asian or immigrant communities tend to congregate.

[BOX]

“On the afternoon of Thursday, June 10, 1999, I accompanied [a defense attorney] on some discovery defense work ... As we approached the site and parked, I noticed a middle-aged Latino man walking towards the bathroom. We... walked toward the bathrooms. The walk to the bathroom took less than one minute. Upon entering the bathroom, I observed a tall Caucasian man... the Latino who previously walked into the bathroom was in one of the bathroom stalls. I... observed the Latino man exit the bathroom stall, and walk past us. The Caucasian man stopped the Latino man, identified himself as a police officer, and told the Latino man that he was under arrest for lewd conduct... At no time did I see the Latino man engage in any wrongful or lewd conduct.” Jeffrey Scroger<sup>85</sup>

[END BOX]

Discriminatory policing of morals regulations has a potentially severe impact on LGBT immigrants. Conviction of a felony can result in deportation and charges connected with issues of morality can have a negative impact on immigration proceedings.

Policing of parks and other public areas particularly affects individuals with limited financial means and individuals who are not “out” to their families or neighbours and who therefore need to use public spaces.

Police officials told AI that targeted enforcement of morals statutes is in response to community complaints. However, there are concerns about the validity of this claim. In Los Angeles both the Christopher Commission report on the LAPD<sup>86</sup> and activists have challenged the LAPD’s reliance on public complaints as justification. Arrests are rarely based on current complaints by members of the public. Indeed, comments to AI by LAPD officials suggest that complaints may be kept open indefinitely.<sup>87</sup> In San Antonio, officials told AI “most of this work is complaint driven”.<sup>88</sup> However, AI received reports from campaigners that such complaints are often vague and homophobic in nature and may not specifically relate to sexual activity but rather to the presence of gay men in parks or other public spaces.

Law enforcement officials are often able to act secure in the knowledge that their behaviour will not be investigated thoroughly or indeed at all. Many individuals charged under morals regulations do not challenge an officer’s version of events, questionable

entrapment techniques or abuse. They are silenced by fear that their sexual orientation will be revealed.<sup>89</sup> Others are unable to afford the costs of mounting a defence. As a result individuals may be wrongfully convicted of a criminal offence while police misconduct and abuse go undetected. Sometimes police reportedly fuel stigmatization of gay men by releasing information to the media, leading to televised arrests or publication of names in the local press.

[QUOTE]

“The biggest problem we are having from the standpoint of wrongfully charged defendants is that 95% of them are so embarrassed by the charge, either indecent exposure, lewd behavior or [sexual] assault on an officer, they are afraid to fight.”Andrew Thomas, Civil Attorney, San Antonio, Texas, December 2003

[END QUOTE]

[BOX]

Benny Hogan was arrested as part of a sting operation by San Antonio Police Department in 1994. Soon after, his name appeared in a local media account of the park arrests. Three days after the article appeared, Benny Hogan went into his garage and hanged himself. His family filed a civil lawsuit against San Antonio Express-News. The Express-News has since ceased printing the names of those arrested for indecent exposure. The new Park Commissioner in San Antonio told AI that he has taken steps so that the media are not alerted to where arrests are being made.

[END BOX]

## **Police raids**

At the time of the Stonewall riots in New York in 1969, police raids on bars and nightclubs frequented by LGBT individuals were a regular occurrence in cities across the USA.

Although raids of gay bars are no longer as widespread, reports indicate continued police targeting of venues where LGBT people socialize.

While LGBT bars and venues in traditionally “gay neighbourhoods” in some cities are allowed to operate largely without interference by police, LGBT bars catering to transgender individuals, LGBT immigrants and members of ethnic minorities are

frequently the focus of police operations.

Police raids in several locations have reportedly been attributed to the enforcement of administrative codes, such as health department violations. However, campaigners claim that such enforcement would not ordinarily be undertaken primarily by police, and that they are merely a pretext for harassment and intimidation of bar owners and patrons.<sup>90</sup>

AI is concerned about reports of verbal and physical abuse as well as cruel, inhuman and degrading treatment of LGBT individuals during raids. Some raids have reportedly involved large numbers of officers, and excessive force against individuals.

[BOX]

In the early hours of 2 March 2003, police reportedly raided The Power Plant, a popular gay after-hours club in Highland Park, Michigan. They arrested the club owner and several hundred patrons. The club operator was arrested on several charges, including operating an illegal establishment, and selling alcohol without a liquor licence. The patrons were issued with misdemeanour citations for illegal trespass and more than 150 cars were impounded and towed from the scene. Reportedly, 50 to 100 officers stormed the premises dressed in black and using laser sights, causing panic. Patrons were bound with their hands behind their back and forced to lie face down on the concrete floor, in some cases for more than eight hours. Reports indicate that those arrested were not permitted to use the bathroom and several were forced to relieve themselves where they lay. Some reported being kicked in the head and back, slammed into walls, and verbally abused.

[END BOX]

## **Policing demonstrations**

Law enforcement agencies in the USA are increasingly employing a range of tactics aimed at controlling crowds, some of which have resulted in serious human rights abuses.

Reports suggest that law enforcement officials have selectively targeted LGBT contingents and activists at demonstrations; employed excessive force at LGBT demonstrations and rallies; and subjected LGBT individuals to verbal abuse, arbitrary detention and unjustified searches.

In March 2003, NYPD officers reportedly verbally and physically abused members of the group Irish Queers who had erected a platform on which to protest the exclusion of LGBT

individuals from the annual parade to mark St Patrick's Day. J.F. Mulligan was reportedly slapped across the face by an officer who shoved his face against the metal grating of a partition inside a police van. Mulligan claims that at the precinct he heard another officer say: "little faggots all over the place today". Another member, Emmaia Gelman, reported that she was grabbed by officers who pulled her onto the roof of a police truck where they were stationed, and one officer laid her down so that her head hung over the side, while clamping down on her neck with his boot. She alleges that she was then handcuffed and dragged headfirst off the police vehicle.

Activists in New York reported that when Operation Homeland Resistance conducted acts of civil disobedience in New York City in May 2003, a number of LGBT activists were arrested. According to organizers, "a higher percentage of women, the majority people of color, and the majority of queer people were detained overnight while others were released only after six hours." The last person reportedly released from police detention several days later was a black lesbian.<sup>91</sup>

## **Policing 'quality of life'**

[QUOTE]

"Quality of life ordinances make it much easier for the local police force to criminalize, harass and arrest LGBT and people of color." Testimony of Trishala Deb, programme coordinator of the Audre Lorde Project, October 2004

[END QUOTE]

"Zero tolerance" and "quality of life" policing is a law enforcement strategy that seeks to create public order by aggressively enforcing laws against minor offences, for example, public drunkenness, loitering, vandalism, littering or public urination.

A number of "quality of life" provisions have been successfully challenged in domestic courts on the grounds that they are too vague and afford too much discretion to the police or on the basis that they are selectively enforced.<sup>92</sup>

New York City began implementing a "quality of life" initiative in 1993. The approach has been credited with a reduction in the city's crime rate. However, the increased arrest rates

for minor offences – largely of members of ethnic or racial minorities — have led to increased complaints of police abuse and misconduct,<sup>93</sup> giving rise to several high-profile police brutality cases. NYPD officials told AI that “quality of life” enforcement remains an important aspect of police activity.<sup>94</sup>

LGBT individuals may initially be targeted under “quality of life” regulations on the basis of their race, ethnicity, age or socio-economic status. In many cases it is difficult to gauge whether they were also targeted on the basis of their sexual orientation or gender identity. While a person may initially be targeted because of their race, for example, the likelihood of police abusing an individual increases when the person’s sexual orientation or gender identity becomes apparent.

Young LGBT people have very few spaces to socialize and congregate as many are not able to be “out” at home and they do not have access to age-restricted venues. They will therefore often tend to congregate in LGBT friendly areas where they feel safe. AI has received a number of reports that young LGBT people are harassed and abused by police enforcing “quality of life” regulations.

There are consistent reports from several cities that “quality of life” ordinances are selectively enforced against homeless people. Such ordinances therefore have a considerable impact on LGBT people as a significant number of homeless people are gay, lesbian, bisexual or transgender. This reflects the fact that members of the LGBT community often face severe economic hardship and may face additional discrimination on the basis of race, immigration status, age and gender.

[CAPTION]

A doctor specializing in adolescent health observes a meeting of counsellors at the Broadway Youth Center in Chicago, Illinois. The center provides support services to transgender youth.

© AP Photo/Jeff Roberson

[END CAPTION]

[BOX]

A young African-American gay outreach worker was waiting at a bus stop in December 2003 when Chicago police officers allegedly arrested him for loitering with intent to solicit.

Despite providing identification and corroborating information from the organization he represents, he was reportedly detained in a downtown precinct for two days.

[END BOX]

“Quality of life” regulations can give rise to discriminatory application and misconduct by police. Regulations on loitering, disorderly conduct and noise violations, for example, are frequently vague, thereby affording individual police officers considerable discretion when enforcing them.

“Quality of life” regulations that are not vague — such as those criminalizing the consumption of alcohol, storage of belongings, and urination in public spaces — tend to be applied selectively towards certain communities. One campaigner noted: “The police cannot possibly prosecute all minor offenders with equal force... Instead of genuine zero tolerance, the police must inevitably exercise discretion about where to focus their limited resources.”<sup>95</sup> There appear to be significant disparities in the way in which these regulations are policed, depending on factors such as the alleged offender’s race, age and socio-economic group. It is therefore perhaps not surprising that LGBT members of ethnic minorities are disproportionately targeted for enforcement of “quality of life” regulations.

[BOX]

What needs to be done?

1. Federal and state governments should review all legislation that could result in the detention, prosecution or punishment of individuals solely for their sexual orientation or gender identity.
2. Federal and state governments should review laws and regulations that have been used in a discriminatory way against LGBT individuals. In particular, vague legislation which lends itself to discriminatory application should be amended to specifically describe the conduct prohibited and should explicitly require monitoring and oversight of enforcement practices in order to prevent selective enforcement.
3. Policing operations should be reviewed to ensure that they are not targeted in a discriminatory fashion, including operations involving the enforcement of “quality of life” regulations and policies.

[END BOX]

## Chapter 6

### Training and accountability

[CAPTION]

New York City Police Academy graduates throw their gloves in the air to end their graduation ceremony in July 2005. New York City Police Commissioner Ray Kelly said he believed that the 1,500 men and women were the most diverse class ever to have graduated from the Academy.

© AP Photo/Julie Jacobson

[END CAPTION]

## Training and accountability

[BOX]

During training at the police academy in San Antonio on same-sex domestic violence in 2000, the trainer was reportedly subjected to harassment based on her perceived lesbian identity — even though it was well known that she was heterosexual and married. She reportedly said she would never do it again. AI was told that there has been no training on same-sex domestic violence since then.

[END BOX]

AI's research suggests that many LGBT people who suffer abuse at the hands of police officers do not come forward and make complaints. The reasons cited for this reluctance include hostility or indifference at police stations; retaliation by officers against LGBT individuals who have reported police misconduct; and inadequate procedures. Public trust in police internal oversight is also undermined by the lack of transparency and delays in investigations.

Many of the complaints which are made are ruled “unfounded” since no corroborating evidence is found. This is particularly problematic for marginalized communities who are less likely to be believed by investigators, and who may not have witnesses willing to come forward. In the event that an officer is found to be culpable of misconduct, disciplinary decisions are often inadequate and there is little consistency from case to case.

Internal oversight bodies often focus their energies on identifying individual perpetrators, at the expense of examining systemic issues and policy review.

Independent oversight and control has been instituted in many cities across the USA. However, these mechanisms often lack funds, staff, expertise and training in LGBT issues. Activists also point out that often, external review bodies are not truly independent and lack real power. However, independent monitors have been instituted in some cities to monitor the internal disciplinary process of police departments, reviewing systemic issues within the department. This type of monitoring could potentially assist in identifying systemic misconduct against marginalized communities.

Very few criminal cases involving excessive use of force or discriminatory practices are

brought against individual police officers. Civil lawsuits may provide financial compensation to individual survivors, but are unlikely to be filed by marginalized and disenfranchised individuals and rarely serve to hold either police departments or individual officers accountable.

AI and other organizations have pointed to the need for effective accountability measures in order to address many of these concerns. However, police departments have frequently resisted reforms of accountability and oversight measures, and some officials continue to block such measures, even if they are adopted.

[BOX]

#### Strip searches

62 per cent of all responding departments train their officers on how to do strip searches; only 31 per cent reported that they instruct their officers in how to strip-search a transgender individual.

#### Same-sex domestic violence

83 per cent of police departments reported providing training on issues around same-sex domestic violence.

14 per cent reported that they do not train on issues around same-sex domestic violence.

#### “Hate crimes” against LGBT individuals

66 per cent of police departments reported providing training on “hate crimes” against LGBT individuals.

28 per cent of police departments reported that they do not train officers on LGBT “hate crime”.

#### Sexual assault of LGBT individuals

86 per cent of police departments provide training regarding sexual assault but 52 of these do not touch on LGBT specific issues.

[END BOX]

Some of these problems are the result of inadequate training on how complaints from LGBT individuals should be dealt with. Only 45 per cent of internal affairs departments who responded to AI’s survey stated that they train their staff on LGBT issues, and of

these, only two have mandatory training.

Nearly 70 per cent of US police departments who responded to AI's survey reported that they provide some LGBT awareness training to new recruits. However, others provide no training at all. When training on LGBT issues does take place, it is frequently not provided in a systematic ongoing manner, but is limited to a session provided for new recruits at the police academy. There are also disturbing reports that the training which does exist often reinforces stereotypes.

While one police department reported that they provide 16 hours of training related to LGBT issues for new recruits, other police departments offer far less.<sup>96</sup> Training experts as well as police officers interviewed by AI stressed that practically oriented training is most effective, since this makes the issues concrete and provides useful tools that officers may use when interacting with situations involving LGBT individuals.

International law and standards require states to provide law enforcement officials with training on human rights standards. While international standards do not explicitly require law enforcement officials to receive training on LGBT issues, some standards do require training to sensitize officers to particular identities. For example, the need for gender-sensitive training of law enforcement personnel has frequently been stressed in the context of addressing violence against women.

In the USA there are no federal guidelines as to the length or content of the training which officers receive before serving on a police force; these are set by each state. There is usually also a stipulation that officers must receive some in-service training after joining the force.

Activists have noted that training on LGBT issues should not exist in a vacuum but needs to incorporate how issues such as race, age, and socio-economic and immigration status impact on members of LGBT communities.

## **Recruitment and diversity**

[BOX]

When e-mails found on an officer's computer revealed that he was transgender, the officer was pressured to leave the department. The officer told AI that after being called to the

Police Chief's office, the Chief reportedly said "I know about your other lifestyle... I can't have you working here. You've got a problem. There is something wrong with you. I've known you my whole life and this sickens and disgusts me... this is unacceptable." The Chief reportedly suggested that the officer get a doctor's note so that the officer could be off for six months and then leave the police department.<sup>97</sup>

[END BOX]

[QUOTE]

"A police force representative of its community will enjoy improved relations with the community and will, consequently, function more effectively." US Commission on Civil Rights, *Who is Guarding the Guardians?*, October 1981

[END QUOTE]

International standards and guidelines stress that law enforcement agencies should be representative of the community as a whole.<sup>98</sup> While AI believes that demographics alone are unlikely to change the underlying culture, police forces should mirror the composition of the communities they police, and include proper representation throughout the ranks of LGBT individuals, women and members of ethnic or racial minorities. Anecdotal evidence suggests there are relatively few LGBT officers who are in a position to be open about their sexual orientation or gender identity, although LGBT police officer associations exist in some larger cities, for example the Gay Officers Action League (GOAL) in New York.

Some LGBT officers AI interviewed reported a predominantly positive experience when they came out to colleagues. Others reported that prejudice surfaces in everyday situations, including inappropriate comments in the locker room or via e-mail and as screen savers. Perceptions that such behaviour and beliefs are somehow acceptable foster discrimination within the department.

[CAPTION]

George J. Farrugia, current President of the Gay Officers Action League in New York (GOAL-NY). GOAL was formed in 1982 to address the needs, issues and concerns of gay and lesbian law enforcement personnel. George Farrugia was part of the team which tried

the first homophobic hate crime under New York's new Hate Crimes statute.

© GOAL

[END CAPTION]

[BOX]

A gay law enforcement officer in Los Angeles told AI: "If someone were to use words like 'nigger' or 'spic', they would be immediately disciplined. However, if they use the word 'faggot' generally nothing happens to them. Discipline only happens if someone steps forward, complains and says they are offended. Jokes and innuendoes in the locker room are still tolerated. This still happens rampantly across law enforcement. Racial jokes and slurs are immediately dealt with, regardless if there is a 'complaining party' or not, but with gay jokes, if no one complains, no one is disciplined. It needs to be seen as any other form of discrimination."<sup>99</sup>

[END BOX]

## **Outreach**

The UN High Commissioner for Human Rights has stated that a prerequisite for the humane performance of law enforcement functions includes ensuring that "every law enforcement agency shall be representative of and responsive and accountable to the community as a whole."<sup>100</sup> Principles for community policing include recommendations that police establish community outreach and public information programmes; liaise regularly with all groups in the community; involve the community in identifying problems and concerns; and coordinate policies, strategies and activities with non-governmental organizations.<sup>101</sup>

AI found a pattern of inadequate proactive outreach to LGBT communities, in particular to the more marginalized, including LGBT members of ethnic minority communities and homeless youth.

[CAPTION]

Anthony Barreto-Neto was born a woman and had a sex change operation in the 1990s. He joined the Hardwick Police Department in 2002 but was reportedly harassed and dismissed because of his gender identity. In a precedent-setting ruling in 2004, the

Vermont Attorney-General found that the town authorities of Hardwick had illegally dismissed Anthony Barreto-Neto after it was learned that he is transgender.

© AP Photo/Toby Talbot

[END CAPTION]

Some police departments have instituted Advisory Boards and Task Forces, which consist of community members who meet with officials on a regular basis to bring up issues of concern. The West Hollywood Station in Los Angeles, for example, has a Gay and Lesbian Conference Committee, where, according to Sheriff Baca, anyone can walk in and participate. According to officials, these are very effective, and allow them to stay in touch with community concerns.<sup>70102</sup> The City of West Hollywood has established a Transgender Task Force, which addresses policing issues, among others. AI believes that such models may be effective, provided that communities are properly represented.

[BOX]

The Gay and Lesbian Liaison Unit (GLLU) in Washington D.C. is staffed by four full-time officers and 10 volunteers. The head of the unit reports directly to the Police Chief. The officers undertake police work as well as outreach, which was noted by the unit as an important factor in gaining respect and credibility within the police department. GLLU is also involved in training efforts within the police department. LGBT organizations and activists, including those representing marginalized communities, expressed great appreciation for the unit, praising individuals involved and the extensive outreach conducted.

[END BOX]

Some US police departments have appointed officers to serve as a link between LGBT communities and the police. However, while LGBT organizations and campaigners generally expressed appreciation for LGBT liaison, in many locations only one or two individuals cover a population of several million people, making it difficult to undertake substantive issues and to properly serve the entire LGBT community. Nevertheless, reports indicate that it can make a difference to have an advocate who understands police

work as well as LGBT issues.

## **Leadership and supervision**

[QUOTE]

“As a leader in the Los Angeles County Sheriff’s Department, I commit myself to honorably perform my duties with respect for the dignity of all people, integrity to do right and fight wrongs, wisdom to apply common sense and fairness in all I do, and courage to stand against racism, sexism, anti-Semitism, homophobia and bigotry in all its forms.”

Los Angeles Sheriff’s Department Core Values

[END QUOTE]

Effective reform requires commitment from the top ranks. There needs to be a fundamental understanding that all individuals have equal rights. This must be instituted at every level of policing and management, including training, recruitment, supervision, outreach to communities and accountability measures.

Clear statements from senior police officials are an important step towards addressing institutional and cultural issues. Supervision and monitoring of operations in day-to-day police work is also important. Reports and lawsuits have documented the lack of diligent supervision throughout all ranks as one of the root causes of police misconduct.

It is of concern that officers who have been on the force for longer periods may not have received any LGBT training as few departments offer systematic in-service LGBT training and those which do have only introduced such initiatives within the last few years. This is particularly problematic in that such officers often hold more senior positions and have supervisory responsibilities for less experienced officers.

## **Accountability for police misconduct**

AI has received a number of reports from LGBT individuals who faced hostility, ridicule, or attempts to dissuade them from making complaints at police stations. Other organizations, investigative journalists, and independent auditors, including in Los Angeles and Chicago, have documented such issues, including intimidation of individuals wishing to make a

complaint, and failure to provide necessary information or forms. AI heard reports of officers charging the victim or potential witnesses with offences such as resisting arrest, interfering with an arrest, or assault when they file or express an interest in filing a complaint.

In contrast, police officials expressed confidence in the complaints system.

[BOX]

A lesbian living in St Paul, Minnesota, (name known to AI) reported that in July 2000 a man repeatedly pushed his shopping cart into her partner, eventually knocking her to the ground. She told AI that an officer stationed at the front of the store was called by a store employee. "When we reported what had happened he informed us that he was off-duty (despite the fact that he was wearing his police uniform and badge and carrying his police issue weapon). He said that if we wanted to press charges then he would have to arrest both my partner and the man since he did not know 'who started it.' When I informed him that the man had been following us for several minutes and had called my partner a 'dyke', he told me that if we 'chose that lifestyle we had to expect some people to have a problem.' He refused to take a report and when we said we wanted his badge number he said that we could only get that if he arrested my partner." The woman took down his badge number and reported the incident to the police precinct, where she was informed that since the officer had not filed any incident report, she could not file a complaint against him. The woman contacted an LGBT newspaper about the incident. Shortly afterwards she was reportedly fired from her job working for the state of Minnesota. She told AI she was informed by her employers that her involvement in the incident was "conduct unbecoming to a state employee".<sup>103</sup>

[END BOX]

[BOX]

On 18 November 2004, a federal jury awarded a gay man US\$1.1 million dollars after finding that his rights had been violated during an arrest for public lewdness in a New York Port Authority public toilet, and that the Port Authority had a policy of making such arrests. According to Alejandro Martinez (left with his lawyer), he was on his way to work when he entered the men's room and a man he later learned was an officer flirted with him. "He

looked at me,” Alejandro Martinez said. “He gave me a smile.” Alejandro Martinez reportedly ignored him and went to the urinal. When Alejandro Martinez went to wash his hands the man stood between him and the sinks so he quickly left. The man reportedly followed him outside, called him back, and said, “You know you are under arrest.” When he objected, Alejandro Martinez said the officer clenched his fist in front of his face and said, “You calling me a liar? You want me to break your teeth?” Later, as he was being processed, Alejandro Martinez said he heard another officer refer to him and the six other men arrested on that morning as “faggots” and “queers”. When one of the men arrested complained, an officer reportedly said, “I can’t do anything about that. I’ve got a quota to fill.” Alejandro Martinez also reported that he was held for 18 hours and endured homophobic abuse and threats of violence from the police. In September 2000, Alejandro Martinez was acquitted of the public lewdness charge in a state trial.

© Gay City News

[END BOX]

AI found that people can face daunting and complex procedures when trying to make a complaint against a police officer. For example, the Internal Affairs Bureau in San Antonio requires a sworn and notarized statement from anyone making a formal complaint, and warns complainants of criminal liability for perjury for making a false complaint. While this may deter frivolous complaints, it also has the effect of stifling complaints, particularly from marginalized or indigent communities who already fear that they will not be believed. Indeed an official from the Internal Affairs Unit in San Antonio conceded that some people leave without making a complaint after being informed of the procedure.

Another obstacle individuals may face when trying to make a complaint is the need to identify the individual officer. Activists and members of the LGBT community in New York City indicated that one of the issues that prevent people from reporting misconduct is officers’ refusal to provide a badge number or name.

[QUOTE]

“[T]he trainings we did were doomed to failure... You train the rookies but then you put them out there with the homophobic and transphobic officers. You’ve got to start from the top.” Carrie Davis, Gender Identity Project, New York City, 3 February 2004

[END QUOTE]

Some cities, including New York<sup>104</sup> and Los Angeles, also allow third parties to make complaints on behalf of the victim. Anonymous and third party complaints have been successful in some instances where precinct commanders were willing to conduct extensive investigations within communities.<sup>105</sup> However, AI also heard from officials that anonymous and third party reporting poses a barrier to proper investigation.

In addition to receiving reports of police abuse and misconduct from members of the public, international standards stipulate that police officers have an obligation to report violations of human rights to their superiors.<sup>106</sup> Two of the internal affairs departments who responded to AI's survey indicated that they had no procedures for officers to report misconduct.<sup>107</sup> In addition, an unofficial "code of silence" exists among many officers, preventing them from testifying against a fellow officer and encouraging them to help in the cover-up of illegal action.

Once a complaint has been made it is usually investigated by a police internal affairs department. AI's survey results indicate that internal affairs departments do not train their staff specifically on LGBT issues, which may affect their ability to identify and investigate sensitive issues which impact on these groups.

Reportedly, only a relatively small proportion of complaints overall are sustained – some reports suggest that it may be as low as five per cent.<sup>108</sup> One of the reasons behind this is a high number of cases where insufficient evidence is available to either confirm or deny the complaint – often in instances where the only evidence is the complainant's word against the officer's.

Independent inquiries into several large police departments have found that internal investigations of allegations of abuse lacked thoroughness and that officers were given the benefit of the doubt even if there was evidence of misconduct.<sup>109</sup>

The way in which police disciplinary reviews and investigations are carried out has reportedly been subject to restrictions following pressure from police unions. Police unions have an important role to play in promoting measures which ensure their members are treated fairly. However, it is important that such measures do not result in human rights abusers enjoying impunity while their victims are denied justice.<sup>110</sup>

Time limits can also affect the ability to investigate and subsequently bring disciplinary

action against an officer. Such restrictions have reportedly led to cases reaching the time limit before officers have been subject to disciplinary action, with the result that cases were dropped. In 2002, San Francisco police officials reportedly planned to drop at least six disciplinary cases against officers because investigators had not completed the cases before the one-year statute of limitations expired and, therefore, no disciplinary action would be taken.<sup>111</sup> The Internal Affairs Unit in San Antonio only has 180 days to investigate from the date of the alleged misconduct.

Public confidence in the complaints and disciplinary process is further undermined by the secrecy of police internal investigations. Some police departments have refused to provide information to victims, their families and attorneys – in some instances on the grounds that “personnel matters” are not subject to disclosure under state confidentiality laws.

In the event that a complaint is sustained against an officer, disciplinary measures may often seem disproportionate to the severity of the crime and inconsistent. The lack of transparent guidelines for disciplinary measures has been cited by monitors and organizations as a factor contributing to a lack of consistency.<sup>112</sup>

Most of the remedies outlined above are largely reactive, and deal with individual complaints, not systemic failings. Police departments have failed to identify and stop “problem officers” from repeatedly committing misconduct. There has also been a failure to tackle the larger systemic issues which give rise to and allow such misconduct to take place with impunity.<sup>113</sup>

More proactive ways of identifying misconduct are being explored by some police departments, including so-called “early warning” systems. Police accountability experts advise that such systems should incorporate several types of data, and not rely solely on citizen complaints, which may only represent a part of misconduct because of under-reporting.

[QUOTE]

“To change behavior effectively, an oversight body must look beyond the particular cases of misconduct to systemic issues implicating policy and training.” Los Angeles Sheriff’s Department Office of Independent Review, October 2002

[END QUOTE]

## **Independent and external civilian oversight**

Some form of independent oversight has been set up in many cities across the USA. There are many different models of external review, including systems where review boards with civilian investigators investigate complaints and issue recommendations, and those in which the police investigate complaints, which are then reviewed by an outside civilian body. In nearly all cases, the external review systems have an advisory function, and the Chief of the Police Department remains responsible for deciding on discipline. An exception to this is San Francisco's Office of Citizen Complaints (OCC), which is publicly funded, has 15 investigators, subpoena power, and authority to discipline, including firing, officers.

Responses to AI's survey of civilian complaint review boards indicated a lack of focus on and expertise in LGBT issues, raising concerns about the ability of external review boards to respond to and adequately investigate complaints made by members of the LGBT community.<sup>114</sup> In addition, many external investigatory bodies have no power to make recommendations or to order witnesses to appear, and their investigations are thwarted if the police or others refuse to cooperate.<sup>115</sup>

Only 34 per cent of the police departments who responded to AI's survey indicated that data on complaints against individual officers was publicly available. Civil rights groups and others have reported that they had difficulty in obtaining data that should be available under public records acts, such as information on shootings, compensation payments and lawsuits. While some police departments provide statistical information on the number of complaints investigated and the number of officers disciplined each year, the amount of data varies, and rarely provides the kind of information which would shed light on the misconduct against and accountability for victims belonging to marginalized groups.

## **Prosecutions and lawsuits**

In the USA, very few criminal cases involving excessive use of force or discriminatory practices are brought against individual police officers.

The Police Accountability Act, incorporated into the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act), gave the US Justice Department the authority to bring civil actions in federal courts against police departments accused of engaging in a "pattern or practice" of abuses.<sup>116</sup> As of July 2005, "pattern or practice"

investigations of 14 agencies were ongoing.<sup>117</sup> This is an important remedy, which has led to a significant reform programme being drawn up in police departments. Unfortunately, the Justice Department does not have the resources to investigate more than a small proportion of problem agencies.

[BOX]

What needs to be done?

1. All law enforcement training programmes should be based on human rights standards and include LGBT sensitivity training. Such training should stress that police misconduct and abuse against LGBT people will not be tolerated.
2. All police departments should develop specific policies and provide training on how to respond to and investigate “hate crimes” based on sexual orientation, gender identity or expression; sexual assault against LGBT individuals; and LGBT domestic violence. Training should also be undertaken on how to address transgender individuals with respect for their dignity, on how to conduct searches of transgender individuals; and on detention policies and procedures for LGBT individuals.
3. Local police should maintain systems for effective consultation with LGBT and other relevant organizations and should engage proactively in outreach to LGBT communities.
4. Local authorities should establish an effective mechanism for reporting complaints of sexual, physical or verbal abuse by law enforcement officials so that victims, relatives and witnesses can file complaints without fear of reprisal, confident that the authorities will act properly and impartially. Investigating and prosecuting authorities should remain sensitive to the difficulties faced by LGBT victims of alleged ill-treatment in pursuing their complaints.

[END BOX]

## Focus on the USA

[BOX]

This report clearly demonstrates that LGBT people in the USA continue to suffer serious police abuses, in some cases amounting to torture and ill-treatment. Within the LGBT community, transgender people, members of ethnic or racial minorities, young people and immigrants bear the brunt of police abuse. The climate of prejudice which LGBT people face in the USA means that many of these abuses continue to go unpunished.

The LGBT rights movement has made significant progress in promoting greater recognition of the rights of LGBT people in the USA. However, despite some positive initiatives by law enforcement agencies and the justice system, much more needs to be done to protect LGBT people from police abuse and misconduct.

- US officials at all levels must publicly recognize that sexual, physical and verbal abuse of LGBT people by law enforcement officials will not be tolerated.
- All allegations and reports of police abuse and misconduct against LGBT people should be promptly and impartially investigated.
- All officers responsible for abuses should be adequately disciplined and brought to justice.
- Federal and state governments should review all legislation that has in practice resulted in the arrest and detention of individuals because of their sexual orientation or gender identity.
- All law enforcement agencies should take action to prevent any discriminatory application of the law by their officials.

[END BOX]

[BOX]

A worldwide campaign

Discrimination and violence against members of the LGBT community occur in every

region of the world. Wherever they occur, campaigners and activists are working, sometimes at great risk to themselves, to raise awareness of and end these abuses.

AI is campaigning worldwide to end the kind of abuses described in this report. Use this report and the information in it to call for action to address discrimination and other abuses against LGBT people. Join AI's campaign and help call on governments to:

- promote the human rights of all, regardless of their sexual orientation or gender identity or expression;
- support recommendations made by UN human rights bodies to end human rights violations on the grounds of sexual orientation and gender identity;
- recognize that discrimination, both in law and in practice, is a key contributory factor to the torture and ill-treatment of LGBT people and remove legal provisions that allow for the detention of people for their sexual orientation or gender identity or otherwise condone discrimination against LGBT people;
- periodically review, evaluate and revise their laws, codes and procedures to ensure that they do not discriminate against LGBT people, and to enhance their effectiveness in eliminating discrimination against LGBT people.
- take measures to end discrimination on the basis of sexual orientation and gender identity in access to economic, social and cultural rights, including housing, employment and health services.

[END BOX]

## **Appendix A: International and domestic law and standards**

The international community has adopted minimum human rights standards applying to all nations. However, the LGBT community in the USA has struggled to realize the basic rights provided for in existing standards. This section provides an overview of the related content of two areas of international law particularly relevant to the fulfilment of LGBT rights: policing and standards protecting identity. It also surveys US anti-discrimination laws.

### International law and standards

The following human rights standards contain provisions relevant to the treatment of individuals by law enforcement officials:

The USA is a party to the International Covenant on Civil and Political Rights<sup>118</sup> (ICCPR). The ICCPR stipulates that everyone has the right to “liberty and security of person,” as well as to freedom from “arbitrary arrest or detention” and “torture or... cruel, inhuman or degrading treatment or punishment.”<sup>119</sup>

The UN Human Rights Committee, a body of independent experts, monitors state compliance with the ICCPR. The Committee has noted that reference to “sex” in the non-discrimination clauses of the ICCPR – Articles 2(1) and 26 – should be taken as including orientation”, thereby affirming that the rights set out in the ICCPR cannot be denied to any individual because of their sexual orientation.<sup>120</sup>

The USA is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This prohibits the use of torture or cruel, inhuman or degrading treatment by law enforcement officials and prescribes that education and information regarding the prohibition of torture be fully included in the training of law enforcement personnel.<sup>121</sup> Under international law, rape of a prisoner by correctional staff is considered to be an act of torture.<sup>122</sup>

The USA is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which obliges each state party to refrain from any “act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in

conformity with this obligation.”<sup>123</sup> An act or practice may be defined as racial discrimination under the Convention by its discriminatory effect on a particular group, even if not intentional.

The USA has signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). CEDAW safeguards the human rights of women, obliging states to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”<sup>124</sup> and to “repeal all national penal provisions which constitute discrimination against women.”<sup>125</sup> Furthermore, CEDAW requires signatory states to take affirmative steps to address such conduct, including modifying social patterns to address and eliminate prejudices based on the idea of stereotyped roles for men and women.<sup>126</sup> Through CEDAW Committee meetings, the need for gender-sensitive training of law enforcement personnel has frequently been stressed in the context of ending violence against women.

The UN Code of Conduct for Law Enforcement Officials provides that law enforcement officials “shall respect and protect human dignity and maintain and uphold the human rights of all persons.” The Code stipulates that law enforcement officials should not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. It also states that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty” and requires a chain of command that is responsive and supportive of human rights. The Code requires states to act with due diligence to ensure that all parts of the population are protected equally and specifies that police agencies should be representative of and responsive and accountable to the community as a whole. It states that law enforcement officials, who have reason to believe that a violation has occurred, or is about to occur, shall report the matter.<sup>127</sup> In addition, the Guidelines for the Effective Implementation of the Code prescribe that effective mechanisms must be established to ensure the internal discipline and supervision of law enforcement officials.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) provide that:

“4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the

intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- a. Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- b. Minimize damage and injury, and respect and preserve human life;
- c. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment”.<sup>128</sup>

The Basic Principles also call on governments to ensure that “arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”<sup>129</sup>

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contains safeguards to prevent arbitrary arrest and detention and to ensure humane treatment of detainees.<sup>130</sup> It contains measures to prevent arbitrary detention and calls for training and clear guidelines to be made available on all matters of police activities affecting human rights to all law enforcement officers.<sup>131</sup> It states that provisions shall be made for the receipt and processing of complaints against law enforcement officials regarding violations of human rights submitted by members of the public, and the existence of those provisions shall be publicized.<sup>132</sup>

#### US laws and standards

Neither the US Constitution nor current federal legislation explicitly provides protection from discrimination against lesbian, gay, bisexual or transgender individuals. Congress has yet to pass the Employment Non-Discrimination Act (ENDA) which was first introduced in 1994.

The Fourteenth Amendment of the US Constitution, which provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws”, has been held to protect against discrimination based on classifications including race, national origin, gender, and alienage.<sup>133</sup> It has also long been held that, for the purposes of equal protection, the acts of law enforcement officials are state actions, thus prohibiting discriminatory treatment by police against protected classes of individuals.

#### State laws

Forty-seven US states have adopted a human rights or anti-discrimination statute that bars discrimination in basic areas of life such as employment and housing on the basis of such identities as race, ethnicity, gender, nationality and religion. Only 16 of these states include a prohibition against discrimination based on sexual orientation.<sup>134</sup> An additional 11 states prohibit such discrimination against state employees.<sup>135</sup> The courts in one other state interpreted its anti-discrimination statute to also prohibit discrimination on the basis of sexual orientation.<sup>136</sup>

Only six of 47 state human rights and anti-discrimination statutes include a prohibition against discrimination on the basis of gender identity or expression.<sup>137</sup> Seven states have existing laws that have been interpreted in court or commission rulings to provide some level of protection to transgender individuals.<sup>138</sup> District of Columbia courts have interpreted the District's statute prohibiting discrimination based on "personal appearance" as covering transgender people.<sup>139</sup>

#### Local level

At the end of 2003, 285 cities, counties and government organizations provided some level of protection against employment discrimination based on sexual orientation. Of those, 152 extended protections to employment in the private sector as well. A total of 67 cities and counties prohibited workplace discrimination on the basis of gender identity or expression.<sup>140</sup>

## **Appendix B: Surveys and interviews with law enforcement officials**

### Surveys

#### A. Police departments

The following police departments returned completed surveys:

Birmingham, Alabama

Anchorage, Alaska

Phoenix, Arizona

Los Angeles, California

Bridgeport, Connecticut

Wilmington, Delaware

Jacksonville, Florida

Atlanta, Georgia

Honolulu, Hawaii

Chicago, Illinois

Lexington, Kentucky

Baltimore, Maryland

Boston, Massachusetts

Jackson, Mississippi

Kansas City, Missouri

Omaha, Nebraska

Las Vegas, Nevada

Manchester, New Hampshire

Albuquerque, New Mexico

New York, New York

Fargo, North Dakota

Portland, Oregon

Philadelphia, Pennsylvania

Memphis, Tennessee

San Antonio, Texas

Salt Lake City, Utah

Virginia Beach, Virginia

Seattle, Washington

Cheyenne, Wyoming

The following police departments declined or failed to return completed surveys:

Little Rock, Arkansas

Denver, Colorado

Washington, D.C.

Boise, Idaho

Indianapolis, Indiana

Des Moines, Iowa

Wichita, Kansas

New Orleans, Louisiana

Portland, Maine

Detroit, Michigan

Minneapolis, Minnesota

Billings, Montana

Newark, New Jersey

Charlotte, North Carolina

Columbus, Ohio

Oklahoma City, Oklahoma

Providence, Rhode Island

Columbia, South Carolina

Sioux Falls, South Dakota

Houston, Texas

Burlington, Vermont

Charleston, West Virginia

Milwaukee, Wisconsin

#### B. Internal affairs departments

The following internal affairs departments returned completed surveys:

Little Rock, Arkansas

Bridgeport, Connecticut

Indianapolis, Indiana

Boston, Massachusetts

Minneapolis, Minnesota

Jackson, Mississippi

Albuquerque, New Mexico

Fargo, North Dakota

Portland, Oregon

Providence, Rhode Island

San Antonio, Texas

The following internal affairs departments declined or failed to return completed surveys:

Birmingham, Alabama

Anchorage, Alaska

Phoenix, Arizona

Los Angeles, California

Denver, Colorado  
Wilmington, Delaware  
Washington, D.C.  
Jacksonville, Florida  
Atlanta, Georgia  
Honolulu, Hawaii  
Boise, Idaho  
Chicago, Illinois  
Des Moines, Iowa  
Wichita, Kansas  
Lexington, Kentucky  
New Orleans, Louisiana  
Portland, Maine  
Baltimore, Maryland  
Detroit, Michigan  
Kansas City, Missouri  
Billings, Montana  
Omaha, Nebraska  
Las Vegas, Nevada  
Manchester, New Hampshire  
Newark, New Jersey  
New York, New York  
Charlotte, North Carolina  
Columbus, Ohio  
Oklahoma City, Oklahoma  
Philadelphia, Pennsylvania  
Columbia, South Carolina

Sioux Falls, South Dakota

Memphis, Tennessee

Houston, Texas

Salt Lake City, Utah

Burlington, Vermont

Virginia Beach, Virginia

Seattle, Washington

Charleston, West Virginia

Milwaukee, Wisconsin

Cheyenne, Wyoming

#### C. Civilian review boards

The following civilian review boards returned completed surveys:

Washington D.C.

Honolulu, Hawaii

Boise, Idaho

Baltimore, Maryland

Omaha, Nebraska

Albuquerque, New Mexico

New York, New York

Salt Lake City, Utah

Milwaukee, Wisconsin

The following civilian review boards declined or failed to return completed surveys:

Birmingham, Alabama

Torrance, California<sup>141</sup>

Commerce, California<sup>142</sup>

Denver, Colorado

Indianapolis, Indiana

Charlotte, North Carolina

Portland, Oregon

Philadelphia, Pennsylvania

Memphis, Tennessee

Houston, Texas

Seattle, Washington

Burlington, Vermont

Detroit, Michigan

Minneapolis, Minnesota

Las Vegas, Nevada

Target city interviews

Chicago

Amnesty International requested a meeting with Philip J. Cline, Superintendent, CPD, by letters of 4 February 2004 and 26 February 2004. Superintendent Cline declined to meet with Amnesty International.

CPD/19th District: Sergeant William Looney, Commanding Officer; and Lieutenant Lynn Kuehn, Community Policing Team Leader, 25 February 2005

CPD/23rd District: Commander Gary Yamashiroya, Commanding Officer; Officer Jose Rios, LGBT Liaison for the 23rd District; and Sergeant Anthony Scalise, Commanding Officer of the Civil Rights Section for the CPD, 26 February 2004.

Los Angeles

Amnesty International requested a meeting with William J. Bratton, LAPD Chief of Police, by letters of 17 December 2003 and 22 January 2004. Although the office of Chief Bratton indicated that he was unavailable to meet with AI, AI was able to schedule meetings with Assistant Chief of Police Papa, as well as with the two LGBT Liaisons of the LAPD,

Officers Jolicoeur and Nielsen. These meetings were all cancelled without offers to reschedule. Despite an additional request to meet with Chief Bratton, dated 4 February 2004, AI was not granted an interview.

LAPD/Hollywood-Wilcox Precinct: Captain Downing, Commanding Officer, 26 January 2004

LAPD/77th Precinct: Captain Kenneth Garner, Commanding Officer, 26 January 2004

West Hollywood Sheriff Station: Sergeant Don Mueller, 26 January 2004

Los Angeles County Sheriff's Department/West Hollywood Station: Captain Long, 29 January 2004

Los Angeles County Sheriff's Department: Sheriff Baca; Linda Castro; Jeff Prang, 29 January 2004

#### New York

NYPD Administration: Deputy Chief John Gerrish, Office of Management Analysis and Planning; Commissioner James Fyfe, Training; June Roberts, Internal Affairs; Detective Kevin Zatariski, LGBT Liaison to the Commissioner; Assistant Chief Gerald Nelson, School Safety Division; Chief Dennis Blackmon, Hate Crimes Task Force, 24 March 2004

NYPD/6th Precinct: Dep. Inspector Brian Fitzgerald; Captain Hanley; Deputy Chief John Gerrish, Office of Management Analysis and Planning, 15 March 2004

NYPD/77th Precinct: Captain Crystal Johnson, Executive Officer for the 77th Precinct; Inspector Owen Monaghan, Office of Management Analysis and Planning; Officer McClain, Community Relations for the 77th Precinct, 22 March 2004

NYPD/115th Precinct: Dep. Inspector Douglas Rolston, Commanding Officer; Inspector Owen Monaghan, Office of Management Analysis and Planning, 22 March 2004

NYPD/Midtown South Precinct: Dep. Inspector Brian Conroy, Commanding Officer; Detective Adam Damico, Community Relations; Inspector Owen Monahan, Office of Management Analysis and Planning; Lieutenant Sam Ortiz, 22 March 2004

#### San Antonio

San Antonio Police Department: Chief Albert Ortiz; Dep. Chief Jeffrey Page, 4 December 2003

San Antonio Police Department, Internal Affairs Bureau: Captain Geraldine Garcia, Professional Standards Commander; Lieutenant Robert Hartle, Internal Affairs Director; Sergeant J.D. McKay, Internal Affairs Unit, 5 December 2003

San Antonio Police Department: Jane Schaefer, Victim Advocate Services, 3 December 2003

Bexar County Sheriff's Department: Sheriff Ralph Lopez; Captain Brianne Lunan, 5 December 2003

## Endnotes

- 1 "Answers to Your Questions about Sexual Orientation and Homosexuality", <http://www.apa.org/pubinfo/answers.html#whatis>, American Psychological Association, 2003.
- 2 The wrists are handcuffed behind the back, and the ankles are tied together with a strap linking the wrist and ankle restraints.
- 3 The restraint chair is a metal framed chair in which prisoners are immobilized in four-point restraints securing both arms and legs, with a strap across the chest.
- 4 The term morals regulations is used in this report to refer to regulations used to prohibit public sexual expression or conduct, including offences such as "lewd conduct" and "public lewdness" and other behaviour seen as offending against public morals.
- 5 Lorde, Audre, "There is No Hierarchy of Oppression", *Interracial Books for Children Bulletin*, Vol. 14, Nos 3 and 4, p.9 (1983).
- 6 See Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity (AI Index: ACT 40/016/2001).
- 7 United States of America: Rights For All (AI Index: AMR 51/35/1998).
- 8 Hatred in the Hallways, Violence Against Lesbian, Gay, Bisexual and Transgender Students in U.S. Schools, Human Rights Watch, 2001.
- 9 Rhode Island Task Force on Gay, Lesbian, Bisexual and Transgendered Youth, "School Shouldn't Hurt: Lifting the Burden from Gay, Lesbian, Bisexual and Transgendered Youth," March 1996.
- 10 Ryan C. and Futterman D., "Social and developmental challenges for lesbian, gay, and bisexual youth", SIECUS Report 2001.
- 11 Savin-Williams R., "Theoretical Perspectives Accounting for Adolescent Homosexuality", *Health Care*, 9(2):95-104, 1988.
- 12 See for example: Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; National Association for the Advancement of Colored People and Criminal Justice

Institute at Harvard Law School, *Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities*, (NAACP 1995).

13 Implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, Report by Mr. Maurice Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States of America from 9 to 22 October 1994, submitted pursuant to Commission on Human Rights resolutions 1993/20 and 1994/64, E/CN.4/1995/78/Add.1, 16 January 1995.

14 *Lawrence v. Texas*, 539 U.S. 558 (26 June 2003).

15 *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States of America*, AIUSA, September 2004.

16 In 2002 the US government implemented a policy requiring men aged 16 and over from 24 Muslim and Middle Eastern countries and North Korea to register with immigration authorities. As a result over 13,000 men were placed in deportation proceedings. See Letter from Amnesty International to Attorney General John Ashcroft, dated 10 January 2003, available at <http://www.amnestyusa.org/news/2003/usa01102003-3.html>. NSEERS has now been suspended.

17 *La Clínica del Pueblo*, Washington, D.C., 20 November 2003.

18 *United States of America: Allegations of Homophobic Abuse by Chicago Police Officers*, (AI Index: AMR 51/022/2001).

19 “Alleged Rape Victim Wants Deputy Charged With a Hate Crime”, *The Associated Press State and Local Wires*, 8 August 2003.

20 The first trial resulted in a hung jury but the case was rescheduled for a retrial in November 2005.

21 Concluding observations of the UN Human Rights Committee: United States of America. 03/10/95, A/50/40, para. 282.

22 The Christopher Commission Report, “Chapter 4: Racism and Bias Affecting the Use of Excessive Force”, p.91, available at [www.parc.info/reports/pdf/christophercommission.pdf](http://www.parc.info/reports/pdf/christophercommission.pdf). The Christopher Commission is an independent commission chaired by attorney Warren Christopher that investigated the LAPD after Rodney King was beaten severely by the LAPD on 3 March 1991. The

commission investigated the structure of the LAPD, including recruitment, training practices, internal disciplinary action and its citizen complaint system.

23 Daley, Chris, Kugler, Elly, Hirschman, Jo, Walking While Transgender, Low Enforcement Harassment of San Francisco's Transgender/Transsexual Community, The Ella Baker Center for Human Rights/TransAction, April 2000, p xii.

24 Reportedly, the arresting officer falsified an e-mail claiming to be from an eyewitness that denied the allegations made by the two Canadians. Dan Castor, District Attorney Drops Charges Against Canadians: Park Ranger Admits Falsifying Evidence, Press Release, 4 December 2001.

25 She reports being held in a "carotid artery" chokehold.

26 The National Coalition of Anti-Violence Programs collects information from a network of approximately 27 anti-violence organizations that monitor and respond to incidents of bias affecting the LGBT community. See: Clarence Patton, Anti-Lesbian, Gay, Bisexual And Transgender Violence In 2003, National Coalition of Anti-Violence Programs, 2004.

27 Reback C., Simon P., Bemis C., & Gatson B., The Los Angeles Transgender Health Study: Community Report, Los Angeles: University of California at Los Angeles, May 2001.

28 Editorial, "Uncouth Cops with Computers," Washington Post, 30 March 2001, A28.

29 Human Rights Committee General Comment 20 on Article 7 of the ICCPR.

30 UN Code of Conduct for Law Enforcement Officials.

31 For post-operative transgender individuals who have had their genitalia surgically modified to resemble those of their desired gender, this practice may not pose a problem. However, pre- and non-operative transgender individuals face serious problems. See, Darren Rosenblum, "Trapped" in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism, GIC TIP Journal, Transgendered in Prisons, University of Michigan Law School, Winter 2002.

32 According to court documents, Judge David Levi of the US District Court in Sacramento ruled that the California Dept. of Corrections had violated the rights of a transgender woman and that the denial of medication amounted to cruel and unusual punishment, noting that "abrupt treatment cessation caused nausea, dizziness and reversal of the chemical castration process". South v. Gomez, 129 F.3rd 127 (9th Circuit 1997).

33 Dr. Stephen Whittle, Paula Stephens, A Pilot Study of Provisions for Transsexual and Transgender People in The Criminal Justice System, and the Information Needs of their Probation Officers, The Manchester Metropolitan University, 14 May 2001.

34 AI interview, Chicago, 7 March 2005.

35 A search of individual using the hands that does not require the individual to remove clothing.

36 Human Rights Committee General Comment 16 to Article 17 of the ICCPR.

37 Birmingham, Alabama; Los Angeles, California; Jacksonville, Florida; Chicago, Illinois; Lexington, Kentucky; Kansas City, Missouri; Las Vegas, Nevada. It should be noted that not all of these departments appear to have a specific policy relating to transgender detainees, for example, Birmingham, Alabama, reported that its policy was "Same as any person – person of same (biological) gender must conduct search."

38 AI Interview with Bronx Lesbian and Gay Health Resource Consortium, New York City, 11 March 2004.

39 UN Doc. A/56/156, para. 21 (Special Rapporteur on torture); E/CN.4/1997/47, para. 8 (Special Rapporteur on violence against women); Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 57th session of the Commission on Human Rights, E/CN.4/2001/9, paras. 48-50; Report of the Special Representative of the Secretary-General on human rights defenders to the 57th session of the Commission on Human Rights, E/CN.4/2001/94, para. 89(g).

40 A state "can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights." Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc E/CN.4/1996/53 para 32.

41 AI interview with domestic violence activist, 29 September 2003.

42 Prior to the 2003 decision in *Lawrence v. Texas*, 539 U.S. 558 (26 June 2003), criminal "sodomy" laws further deterred reporting, since survivors faced potential criminal prosecution when reporting crimes to the police.

43 Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New

Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin. See further: National Gay and Lesbian Task Force, <http://www.thetaskforce.org/downloads/hatecrimesmap.pdf>.

44 California, Connecticut, District of Columbia, Hawaii, Maryland, Minnesota, Missouri, New Mexico, Pennsylvania, Vermont. See further: <http://www.nctequality.org/resources.asp>.

45 Hate Crime Statistics 2003, Federal Bureau of Investigation, US Department of Justice, November 2004. Local law enforcement agencies are not legally required to report hate crime and agencies in states that have laws obliging them to report data frequently do not comply.

46 Clarence Patton, Anti-Lesbian, Gay, Bisexual, and Transgender Violence in 2003, National Coalition of Anti-Violence Programs, 2004 Preview Edition.

47 Gwendolyn Ann Smith, Remembering Our Dead, <http://www.gender.org/remember/>. See also: <http://groups.msn.com/PeopleofGender/dayofremembrance.msnw>.

48 Hate Crimes in Chicago, Annual Report – 2003, Chicago Police Department.

49 2003 Hate Crimes Report, LA County Commission on Human Relations, p.31.

50 Anti-Lesbian, Gay, Bisexual, and Transgender Violence in 2003, National Coalition of Anti-Violence Programs, 2004 Preview Edition, p.36.

51 See Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2002, 2003, National Coalition of Anti-Violence Programs.

52 AI interview with Marshall Wong, Human Rights Commission - Hate Crime Reporting Unit, Los Angeles, 27 January 2004.

53 Crime in the United States 2002, Federal Bureau of Investigation, Department of Justice, October, 2003.

54 In a Time of Broken Bones, A call to Dialogue on Hate Violence and the Limitations of Hate Crimes Legislation, Katherine Whitlock, Justice Visions Working Paper, American Friends Service Committee, 2001.

55 Rhonda Smith, Police Question Anti-Gay Attack on Colo. Lesbian Teen, New York Blade News, 5 April 2002, at: <http://www.tampabaycoalition.com/files/405PoliceQuestionAttackLesbianHappened.htm> .

56 "Denver Teen Attacked for Her Gender Expression, 'I don't look like a girl,'" TG

Crossroads, 29 March 2002, available at:

<http://www.tgcrossroads.org/news/archive.asp?aid=167>.

57 According to the SAPD, the officer involved stated the case “may have been carried as a Hate Crime because of the statement”, but it was felt that the assault was not motivated by the complainant’s sexual orientation. According to the SAPD, this case was not handled as a murder because the attending physician documented that the cause of death was not a result of his injuries sustained in the attack.

58 AI interview with Chief Ortiz, San Antonio Police Department, 4 December 2003.

59 Chicago Police Department: Hate Crimes Report 2002.

60 “Queer” is used by many within the US LGBT community as an umbrella term for a range of sexual orientations and gender identities, but it still used by many outside the community as a derogative term of abuse.

61 AI interview Matt Gross, Director, Lakeview Coalition, Chicago, 18 September 2004.

62 AI interview with Marshall Wong, Human Rights Commission – Hate Crime Reporting Unit, Los Angeles, 27 January 2004.

63 LA Gay and Lesbian Center (LAGLC) Anti-Violence Project Incident Report, 22 October 1999.

64 Anti-Lesbian, Gay, Bisexual, and Transgender Violence in 2003, National Coalition of Anti-Violence Programs, 2004 Preview Edition.

65 Many support services for survivors of domestic violence including emergency shelters, transitional housing and counselling support groups are not available to LGBT individuals or do not offer LGBT specific services.

66 AI interview [name on file with AI], 3 December 2003.

67 In response to pressure around this case and others, the police department changed the structure of the Family Unit: there are now local offices that are able to respond to domestic violence cases.

68 Transitions, Volume 14, No. 4, June 2002, cited in Domestic Violence in Lesbian, Bisexual, Gay and Transgender Communities: A Fact Sheet, Women’s Human Rights Program, Amnesty International, USA, found at:

[http://www.amnestyusa.org/women/violence/domesticviolence\\_lgbt.html](http://www.amnestyusa.org/women/violence/domesticviolence_lgbt.html).

69 Rhode Island Task Force on Gay, Lesbian, Bisexual and Transgendered Youth,

“School Shouldn’t Hurt: Lifting the Burden from Gay, Lesbian, Bisexual and Transgendered Youth,” March 1996.

70 Urban Justice Center, Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System 16 (2001).

71 Rachel Baum, Lesbian, Gay, Bisexual and Transgender domestic violence in 2002, National Coalition of Anti-Violence Programs, Preliminary Edition 2003.

72 Los Angeles, California; Honolulu, Hawaii; Lexington, Kentucky; Kansas City, Missouri; and Portland, Oregon.

73 AI interview, Gay and Lesbian Adolescent Social Services, Los Angeles, 28 January 2004.

74 AI interview STOP/ Domestic Violence Program, Los Angeles Gay and Lesbian Center, Matt Pulling, 30 September 2003.

75 Interview with Chief Ortiz, San Antonio Police Department, 4 December 2003.

76 Gelsys Rubio, Director, Latino Counseling Services, Interview, Chicago, 25 February 2004.

77 Lora Branch, Director, City of Chicago Department of Public Health, Interview, Chicago, 26 February 2004.

78 One advocate told AI, “If you protest your arrest, you have to stay longer”, AI interview, Streetworks, New York City, 5 March 2004.

79 See endnote 4.

80 LAMBDA reviewed arrest reports from March and April in 2001, finding 10 cases where individuals were arrested although the reports show that no person was present other than an undercover officer, who solicited or encouraged the conduct.

81 Wharton’s Criminal Law (15th ed.) paras 307, 308. See also: 50 Am Jurisprudence 2d, Lewdness, Indecency, and Obscenity para. 1.

82 See General Order in investigating sexual activity in public spaces by the Massachusetts State Police, copy of Order available at:  
[http://www.glad.org/GLAD\\_Cases/generalorder.shtml](http://www.glad.org/GLAD_Cases/generalorder.shtml)

83 Adrian Brune, “VA Man Sentenced for Sodomy Solicitation”, The WashingtonBlade.com, February 20, 2004, available at:

<http://www.washblade.com/2004/220/news/localnews/-sentanced.cfm>. Other reports include a man who was reportedly charged and jailed under a repealed "importuning law" in Ohio: Eric Resnick, Man jailed for breaking law that wasn't in effect, Gay People's Chronicle, 19 September 2003.

84 The text of the law had remained in penal code books that police officers use to decide what charges to bring against a defendant. It was removed in 2000 after intense lobbying by the Empire State Pride Agenda and others. Officials claimed that most of these charges would have been changed to "public lewdness" but declined to check District Attorney records.

85 Statement of Jeffrey Scroger, at the time a law student at UCLA, submitted with the Gay and Lesbian Action Alliance, Petition for an Independent Investigation of LAPD Lewd Conduct Arrest Practices, 11 April 2000.

86 See endnote 22.

87 AI interview with Captain Downing, Hollywood-Wilcox Station, LAPD, 26 January 2004.

88 AI Interview with Chief Albert Ortiz, San Antonio Police Department, San Antonio, 4 December 2003.

89 Individuals labelled "sex offenders" are required to register with law enforcement agencies and may be unable adopt or foster a child. Advocates also note that convictions can mean people face difficulties in terms of employment and professional licences, as well as deportation.

90 For example, uniformed or vice officers are reported to enter bars or parties, ostensibly to check fire code, licensing, or health department violations. AI has heard such reports in Los Angeles, Chicago and New York City.

91 AI interview with Rickke Mananzala, New York City, 23 March 2004.

92 See, *City of Chicago v. Morales*, 527 U.S. 41 (1999); *State v. Burnett*, 755 N.E.2d 857 (Ohio 2001) cert. denied, 122 S. Ct. 1790 (2002); *Johnson v. City of Cincinnati*, No. 00-4477 (6th Cir. 2002).

93 A study by the Legal Aid Society found that 85 per cent of drug arrests under Operation Condor, a US\$24-million narcotics enforcement drive, involved members of racial or ethnic minorities.

94 AI interview, Deputy Inspector Kevin Fitzgerald, 6th Precinct, New York City, 15 March

2004.

95 Jeffrey Rosen, "Zero Tolerance; When Good Policing Goes Bad", The Washington Post, 23 April 2000; Jeffrey Rosen, "Why Patrick Dorismond Didn't Have to Die", The New Republic, 10 April 2000.

96 For example, Birmingham, Alabama, reported 16 hours of training. Police departments in Los Angeles, California; Atlanta, Georgia; Honolulu, Hawaii; and Manchester, New Hampshire, reported four hours or less of LGBT-related training.

97 AI interview, 22 March 2004.

98 UN General Assembly Resolution 34/169 of 17 December 1979, adopting the UN Code of Conduct for Law Enforcement Officials, preambular paragraph 8 (a).

99 Sgt. Donald M. Mueller, Los Angeles County Sheriff's Department, Los Angeles, 27 January 2004.

100 UN Code of Conduct for Law Enforcement Officials.

101 UN Code of Conduct for Law Enforcement Officials.

102 AI interview with Sheriff Lee Baca, Captain Linda Castro, Los Angeles Sheriff's Department, and Mayor Jeffrey Prang, City of West Hollywood, 29 January 2004.

103 Survivor account, 25 March 2004; name withheld.

104 Officials stated that third party complaints are accepted. However, they indicated that the name of the person subjected to police misconduct must be provided. AI Interview with Lt. June Roberts, Internal Affairs, NYPD – Administration Meeting, New York City, 24 March 2004.

105 AI interview with Captain Downing, Hollywood-Wilcox Station, LAPD, 26 January 2004; AI interview with Deputy Chief Michael Berkow, Internal Affairs Division, LAPD, 28 January 2004.

106 Article 8, UN Code of Conduct for Law Enforcement Officials.

107 These were the Little Rock, Arkansas, department and the Indianapolis, Indiana, department.

108 For example, in 2004 the Office of Police Complaints of the District of Columbia sustained only 5 per cent of cases. Annual Report, Government of the District of Columbia, Office of Police Complaints, January 2005.

109 See for example: Report of the Independent Commission on the Los Angeles Police Department (The Christopher Commission) published 9 July 1991, p.160 and The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, (The Mollen Commission), published 7 July 1994, p.85.

110 For example, activists in Chicago told AI that the police union continues to be a major impediment to bringing perpetrators of misconduct to justice.

111 See Martin J. Mayer, Case Alert Memorandum to All Police Chiefs and Sheriffs, 24 November 2003, available at:

<http://www.jones-mayer.com/clientalerts/ca1819112403.asp> Los Angeles Daily Journal, 13 November 2002.

112 For example, The US Commission on Civil Rights has noted that jurisdictions in the USA have varying interpretations of legal standards of reasonable behaviour and the legitimate use of force. The US Commission on Civil Rights, Revisiting Who Is Guarding the Guardians?, November 2000, <http://www.usccr.gov/pubs/guard/main.htm>

113 For example, a Chicago legal aid clinic professor told AI that the clinic had successfully brought several police brutality lawsuits, and found that some officers had around 30 complaints against them in preceding years.

114 Completed surveys were submitted by the external review boards of Washington D.C.; Honolulu, Hawaii; Boise, Idaho; Baltimore, Maryland; Omaha, Nebraska; Albuquerque, New Mexico; New York, New York; Salt Lake City, Utah; and Milwaukee, Wisconsin.

115 Thirty-eight per cent of external review bodies reportedly had subpoena power in 1997.

116 Violent Crime Control and Law Enforcement Act of 1994 Codified at 42 U.S.C. para. 14141.

117 These included Charleston, WV; Cleveland, OH; Detroit, MI; Eastpointe, MI; City of Miami, FL; New Orleans, LA; New York City, NY; Portland, Maine; Prince George's County, MD; Providence, RI; Riverside, CA; Schenectady, NY; and Tulsa, OK.

118 International Covenant on Civil and Political Rights.

119 Articles 7, 9, International Covenant on Civil and Political Rights.

120 Human Rights Committee, Toonen v. Australia (Views on Communication, No

488/1992, adopted 31 March 1994) and *Young v. Australia*, case 941/2000.

121 Article 10 (1) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

122 Combating torture – a manual for action (AI Index: ACT 40/001/2003).

123 Article 2, International Convention on the Elimination of All Forms of Racial Discrimination.

124 Convention on the Elimination of All Forms of Discrimination against Women, Article 2(f).

125 Convention on the Elimination of All Forms of Discrimination against Women, Article 2(g).

126 Convention on the Elimination of All Forms of Discrimination against Women, Articles 2 and 5.

127 UN General Assembly Resolution 34/169 of 17 December 1979, adopting the UN Code of Conduct for Law Enforcement Officials, preambular paragraph 8 (a) and Articles 2, 3, 7 and 8 of the UN Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 22-26.

128 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

129 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 7.

130 Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment.

131 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 3; Standard Minimum Rules for the Treatment of Prisoners, Rules 46 and 47; Declaration on the Protection of All Persons from Enforced Disappearance, Article 6(3); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 1, 11, and 19.

132 Declaration on the Protection of All Persons from Enforced Disappearance, Articles 9 and 13; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 9; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 23; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 33; Standard Minimum

Rules for the Treatment of Prisoners, Rule 36.

133 Alienage: the state or legal condition of being an alien.

134 California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Wisconsin. (As noted by Human Rights Campaign, *The State of the Workplace: For Lesbian, Gay, Bisexual and Transgender Americans*, 2004 (2005), available at: [www.hrc.org](http://www.hrc.org).)

135 Alaska, Arizona, Colorado, Delaware, Indiana, Kentucky, Louisiana, Michigan, Montana, Pennsylvania and Washington. (As noted by Human Rights Campaign, *The State of the Workplace: For Lesbian, Gay, Bisexual and Transgender Americans*, 2004 (2005), available at: [www.hrc.org](http://www.hrc.org).)

136 Oregon, see *Harris v. Pameco Corp.*, 170 Or. App. 164, 12 P.3d 524 (Or. App. 2000).

137 California, Illinois, Maine, Minnesota, New Mexico, Rhode Island. See [www.transgenderlaw.org](http://www.transgenderlaw.org).

138 Connecticut, Florida, Illinois, Hawaii, Massachusetts, New Jersey and New York. (As noted by Human Rights Campaign, *The State of the Workplace: For Lesbian, Gay, Bisexual and Transgender Americans*, 2004 (2005), available at: [www.hrc.org](http://www.hrc.org).)

139 *Underwood v. Archer Management Services*, 857 F. Supp. 96, 97 (D.C. 1994).

140 Human Rights Campaign, *The State of the Workplace: For Lesbian, Gay, Bisexual and Transgender Americans* 2004 (2005), available at: [www.hrc.org](http://www.hrc.org).

141 The Department of Ombudsman reviews and assesses investigations by the LA County Sheriff's Department and the Office of Public Safety.

142 The Office of Independent Review oversees the LA County Sheriff's Department.

## **BACK COVER**

### STONEWALLED – STILL DEMANDING RESPECT

The efforts of countless campaigners have ensured that recognition of lesbian, gay, bisexual and transgender (LGBT) rights in the USA has made significant progress over recent decades. However, as this report shows, LGBT people in the USA remain at risk of gender-based violence, sometimes amounting to torture and ill-treatment. This report summarizes the main findings of extensive research into abuses against LGBT individuals in the USA. It also outlines some key measures which could help stop these abuses and which form the focus of Amnesty International's work to promote and defend LGBT human rights in the USA and worldwide.

[www.amnesty.org](http://www.amnesty.org)[www.amnestyusa.org/outfront/](http://www.amnestyusa.org/outfront/)

[QUOTE]

"I know to be respectful to police officers but I'm tired of the way they are treating us." A Latina transgender woman, January 2004

[END QUOTE]

[QUOTE]

"Nothing is more unfair than singling out a group and making them criminal when they are not." A 60-year-old gay man, February 2004

[END QUOTE]