



LGBTI persons in Chile deprived of liberty, with restrictions on their liberty, and other human rights situations related to torture, inhuman and degrading treatment or punishment

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Prepared by Constanza Valdés and Michel Riquelme on behalf of the Frente de la Diversidad Sexual,¹ with the technical assistance of ILGA.²

Introduction

This document briefly analyses the situation of the lesbian, gay, bisexual, trans and intersex (LGBTI) population in Chile, with a particular emphasis on these persons who are deprived of liberty in detention centres, and in other situations of restricted liberty. After presenting the general situation of progress and challenges in the context of human rights and discrimination experienced by LGBTI persons in Chile, the submission discusses specific situations of detention demonstrating this reality.

General overview of the situation of LGBT persons in Chilean society

The perception of LGBTI persons in Chile has improved as a result of the increase in visibility within the media, including ad campaigns by the Government. In another positive step, in 2014, Law No. 20.830 was enacted, creating Civil Union Agreements, which resemble marriage in some respects, and which grants a new civil status, namely “civil cohabitation”.³

In addition, in 2012, following a hate crime against Daniel Zamudio, Law No. 20.609 to Establish Measures against Discrimination was adopted. The law identifies discrimination on the basis of sexual orientation and gender identity as suspicious categories. However, a study published in 2015⁴ showed that since the enactment of the law, there had been only 36

¹ *Frente de la Diversidad Sexual* (Sexual Diversity Front) is the main network of sexual diversity organisations in Chile, composed of 11 bodies.

² ILGA – the International Lesbian, Gay, Bisexual, Trans and Intersex Association – is the global federation of LGBTI organisations, with a membership of over 1200 organisations in all continents.

³ As of February 2016, 2808 couples had celebrated this kind of union, of which 28% were same sex couples (article available here: <http://www.latercera.com/noticia/tendencias/2016/02/659-666533-9-2808-parejas-han-optado-por-el-acuerdo-de-union-civil-y-otras-5347-ya-reservaron.shtml>). The demand for marriage equality remains alive and the Government has announced the presentation of a draft law by 2017 (article available here: <http://www.cooperativa.cl/noticias/sociedad/homosexualidad/gobierno-espera-enviar-proyecto-de-matrimonio-igualitario-en-2017/2015-11-12/062951.html>).

⁴ “*La ley Zamudio en acción: Sentencias de primera instancia sobre acción antidiscriminación emitidas entre diciembre de 2012 y marzo de 2015*”, (The Zamudio law in action: Decisions at first instance on anti-discrimination cases issued between December 2012 and March 2015) available at: http://www.academia.edu/15066767/La_Ley_Zamudio_en_acci%C3%B3n_sentencias_de_primera_instancia_sobre_acci%C3%B3n_antidiscriminaci%C3%B3n_emitidas_entre_diciembre_de_2012_y_marzo_de_2015

prosecutions in relation to discrimination. Of the 36 cases, only three cases invoked sexual orientation as a cause, and only one invoked gender identity. Of these four, only one resulted in a positive decision, and it constituted the first time sexual orientation was found to be a motivation in a hate crime.⁵

It is worth noting that, despite the existence of the above-mentioned law, hate crimes continue and homophobic murders are still being recorded. The most recent incident, in February 2016, targeted Marcelo Lepe,⁶ a young person who, according to his family, had suffered constant homophobic abuse by his murderers.

The evolution of discrimination and violence towards the LGBTI population in Chile has been explored in a number of surveys. In 2013, the Government undertook its first survey on discrimination. The results showed that 22% of respondents confirmed having been discriminated against on the basis of sexual orientation.⁷ In 2014, the *Instituto Nacional de Juventud* (National Youth Institute), published a survey on young people's perception of sexual diversity revealing, according to the state body, an upswing in tolerance.⁸ However, in 2015 the *Fundación Todo Mejora* released the results of a survey on homophobic bullying, in which 38.3% of student respondents said that gender expression is one of the main motives of bullying. 31.4% declared that the perceived sexual orientation of a person is also a cause for harassment.⁹ Finally in the labour context, this year, the findings of the first survey of the LGBTI population on this topic found that it is more difficult for the LGBTI population to obtain work than for heterosexual and cisgender persons.¹⁰

Currently, the constitutionality of a draft law on Recognising and Providing Protection of the Right to Gender Identity, which was introduced to the senate in 2013 through a parliamentary motion, is being considered. The original text has been modified considerably,¹¹ but the Government has held meetings with civil society to obtain new input on the text.¹²

Civil society remains optimistic about the draft law, but until a specific law is enacted, transgender persons are subject to the procedure established in Law No. 17.344 on Change

⁵ Article available here: <http://www.publimetro.cl/nota/cronica/primer-condena-por-ley-zamudio-en-contra-de-famoso-motel-que-discrimino-a-lesbianas/xlQllg!QtXYZltMJzaZc/>. The scant use of the anti-discrimination law by the LGBTI population generates profound questions regarding the effectiveness of the law and the reasons for which it is not relied upon by these persons. This has led organisations to demand reforms to include economic reparations for victims and the creation of an institutional culture of non-discrimination by the State.

⁶ Article available here: <http://www.biobiochile.cl/2016/02/19/acusan-ataque-homofobico-por-crimen-de-joven-de-20-anos-en-san-bernardo.shtml>.

⁷ Article available here: <http://www.emol.com/noticias/nacional/2013/11/05/628246/mayoria-de-los-chilenos-dice-ser-victima-de-discriminacion-segun-encuesta-gubernamental.html>.

⁸ Article available here: <http://www.latercera.com/noticia/tendencias/2014/09/659-594515-9-encuesta-del-injuv-revela-alza-en-la-tolerancia-de-jovenes-respecto-de-la.shtml>.

⁹ Study available here: http://todomejora.org/wp-content/uploads/2015/12/TodoMejora_Estudio_BullyingHomofobico_InvestigacionyAccion_InformeEjecutivo.pdf.

¹⁰ Article available here: <http://www.emol.com/noticias/Nacional/2016/01/07/767297/Ministra-Rincon-busca-disminuir-la-discriminacion-por-orientacion-sexual-en-el-trabajo.html>.

¹¹ Transgender organisations raised the demand for a law requiring an administrative, not a judicial, system, as was in the original text. They also call for children and adolescents to have access to the process of correction of birth certificates, including in situations where their legal guardians are opposed to it.

¹² Article available here: <http://www.frentedeladiversidad.cl/comunicados-2016-LEY-DE-IDENTIDAD-DE-GENERO.htm>.

of First and Last Names, leaving the decision to change a person's registered sex to the judge on duty. Courts request opinions by sexologists and psychiatrists which are required by the *Servicio Médico Legal* (Forensic Medical Service) in order to grant or deny a change of sex in national identity documents. A recent emblematic case is that of Noah Daniel, who was denied a change of name and gender due to still having female internal organs. The judge demanded that Noah Daniel undergo an operation to remove the uterus and ovaries in order to be able to grant the request.¹³ The problems of a lack of identity recognition of transgender persons also affects children and adolescents. An example is Matías Reyes, an adolescent who was subjected to discrimination and assaults in different schools in which he studied.¹⁴

In relation to the sexual and reproductive rights, in this too, the LGBTI population is invisibilised and their rights are violated in many cases. One concerning aspect is that the Government acknowledges that it does not collect information allowing epidemiological monitoring of HIV/AIDS in the transgender population.¹⁵ This demonstrates the urgent need for the creation of patient registration forms that include information on sexual orientation and gender identity, separate from registered sex.

Regarding the situation of intersex persons, through the law on transparency, four of six different hospitals consulted declared that their institutions performed corrective surgeries on intersex children. Yet, not one of them had a protocol on interventions in such cases. In addition, the majority of hospitals consulted did not gather information on births or treatment of these patients.¹⁶ In December 2015, the Ministry of Health issued a circular in which it instructed that all normalising treatments of intersex children, including irreversible genital surgeries, cease until these children were old enough to make decisions about their own bodies.¹⁷ This step forward is welcomed, but civil society is waiting to see how the circular is implemented.

Concerning the pathologisation of transsexualism, Chile continues to endorse its treatment as a type of mental disorder. Within its health policies, Chile includes mandatory psychiatric exams for diagnosis of the disorder in order to approve access to sexual health treatments, such as hormonal treatments and gender transition surgeries.¹⁸ Despite a call by the *Colegio de Psicólogos de Chile* (Chilean College of Psychologists),¹⁹ a diagnosis of the disorder of

¹³ Article available at: <http://amnistia.cl/web/noticia/sobre-noah-daniel-y-el-respeto-por-su-identidad/>.

¹⁴ Article available here: <http://www.observador.cl/6539-les-mat-as-el-ni-o-transg-nero-de-los-andes-que-quiere-estudiar-sin-ser-discriminado>. This led some families with transgender minors to organise themselves and search for solutions themselves in the face of discrimination against their children (Article available here: <http://www.paula.cl/reportaje/infancia-en-transito/>).

¹⁵ Reply of the Minister for Health to the citizen's request of 17 February 2016 under the transparency law (Folio N° AO001T0000859).

¹⁶ Reply of 23 July 2012 of *Hospital Dr Luis Calvo Mackenna* (Trámite n° 208264). Reply of 31 July 2012 of *Hospital Exequiel González Cortés*. Reply of *Hospital Clínico San Borja Arriarán* (Trámite N° 208263, Folio 208263). Reply of 31 July 2012 of *Hospital de niños Roberto del Río*.

¹⁷ Document available here: <http://cdn.elciudadano.cl/wp-content/uploads/2016/01/circular-18-MINSAL-intersex.pdf>.

¹⁸ "Vía de atención clínica para personas con incongruencia entre sexo físico e identidad de género". (Clinical care of persons with sex and gender identity incongruence) Document available here: <http://www.saludtrans.cl/wp-content/uploads/2012/09/via-clinica-para-la-adecuacion-corporal-ministerio-de-salud-de-chile.pdf>.

¹⁹ In June 2015, the Chilean College of Psychologists issued a call denouncing reparative therapies for homosexuality, releasing a report on the subject. Document available here: http://colegiopsicologos.cl/web_cpc/wp-content/uploads/2015/06/Referencias-Tecnicas-Terapias-Reparativas-Revision-final-04-Junio-2015.pdf.

gender dysphoria remains the decision of each psychologist and psychiatrist, along with the number of sessions that the person must attend. This is primarily the situation in the private health system, as the public health system has a shortage of mental health professionals. The Government recognises that despite having a protocol on healthcare for transgender persons since 2011, it has not dedicated specific resources to the care of this population.²⁰

Persons deprived of liberty

On 21-25 August 2008, the Rapporteur on the rights of persons deprived of liberty in the Americas undertook, at the invitation of the Government, a visit to the Republic of Chile. Among the Rapporteur's observations were:

- a) Excessive and unnecessary use of force and punishments, a systematic practice of physical maltreatment by members of the *Gendarmería*, and the use of solitary confinement in inhumane conditions.
- b) The existence of a generalised practice of degrading and humiliating body searches during visits, in particular of women and girls. (...)
- d) Serious deficiencies and limitations in the programmes of social rehabilitation, including the limited percentage of the incarcerated population that had access to the programmes of the *Centros de Educación y Trabajo* (Centres of Education and Work).
- e) The observance, in the Centres operated by the State (that had not been tendered) of a high level of overcrowding rarely seen in the region, extremely unhealthy conditions that include precarious or poor drinking water services, food, hygiene and health, as well as terrible conditions of infrastructure and serious deficiencies or absence of real programmes of social rehabilitation.²¹

While the State has taken steps to rectify these situations, in the case of LGBTI populations, especially those accommodated in centres of detention for persons registered as being of male sex, complaints are still being reported regarding these issues. Unfortunately, due to the lack of monitoring, studies, precise statistics or records, there are no figures on the number of these persons who are deprived of liberty. Within those detention centres, the existing regulations don't establish a single specific norm regarding the treatment of LGBTI persons.

However, there are agreements between the *Gendarmería* and the Ministry of Health to monitor HIV within the prisons. The *Fundación Savia* commented on the tracking of this public policy in a report,²² concluding that:

"The observations made in this study can confirm that the population deprived of liberty living with HIV in the Metropolitan Region has effective access to adequate medical

²⁰ Reply of the Minister for Health to the citizen's request of 1 February 2016 under the transparency law (Folio N°AO002T0000340).

²¹ *Estándares internacionales en materia de personas privadas de libertad y condiciones de los centros penitenciarios* (International standards relating to persons deprived of liberty and conditions of prisons). Available here:

<http://bibliotecadigital.indh.cl/bitstream/handle/123456789/311/ESTANDARES.pdf?sequence=4>.

²² *Investigación de monitoreo y valoración de la política pública de prevención y atención integral del VIH y SIDA en población privada de libertad* (Monitoring and evaluation investigation into the public policy of prevention of and comprehensive care for HIV/AIDS in populations deprived of liberty). Available here:

http://www.fundacionsavia.cl/media/uploads/docs/INVESTIGACION_EN_POBLACION_PRIVADOS_DE_LIBERTAD_1.pdf.

attention, good quality antiretroviral medication, necessary tests and a number of condoms for their sexual needs. However, the detention conditions of dampness, food, and lack of access to hygienic bathrooms, constitute difficulties for the achievement of an optimal level of recuperation for the desired wellbeing of persons living with HIV.”

Recently, a claim for a protection remedy (Rol 9043-2015) was filed before the Court of Appeal of Concepción against the *Gendarmería* concerning the degrading living conditions of GBT persons living with HIV deprived of liberty, citing that they are also the subject of jokes and discrimination by other detainees, as well as the personnel of the *Gendarmería*, due to their gender identities and expressions. Even though gender identity is recognised as a prohibited ground of discrimination in Law No. 20.609, gender expression is not mentioned in any Chilean statutes.

In 2014, the *Instituto Nacional de Derechos Humanos* released a report²³ on the situation in prisons in Chile. The report stated that LGBT persons are discriminated against, beaten and even excluded from workshops given to the wider prison population.²⁴ The testimonies in the report repeatedly mentioned that lack of respect for the gender identity of persons deprived of liberty:

“They treat us like men and we live as women, they call us men and we are laughed at by the others. So, the same persons discriminate against us and give us badges with male names...”

The *Gendarmería* has adopted the policy of segregating the gay, bisexual and transgender population from the rest of the prison population. All persons who state that they are homosexual (homosexual is understood to include transgender persons) are placed in cells of the special population, usually made up of GBT populations, persons living with HIV and persons with physical or mental disabilities. Transgender persons who have not changed their legal sex or name cannot choose to be accommodated in prisons that accord with their gender identity.

Concerning access of transgender women to aspects making up their personal construction of their identity and expression of their gender, such as the use of make-up, women’s clothing and having long hair, a request²⁵ to the *Gendarmería* under the transparency law revealed that the use of these materials is prohibited by the institution’s own regulations. In the same freedom of information request, only one detention establishment stated that it gave its transgender women detainees access to treatments and health tests relating to feminising hormones.

Civil society organisations led by transgender persons, specifically in the cities of Iquique and Antofagasta, report of degrading searches of persons visiting their family members who are deprived of liberty. Searches include stripping in front of a gendarme. In the case of transgender women, this search is performed by a male member of staff, while women are checked by female staff members. There are also complaints that transgender detainees who

²³ *Estudio de las condiciones carcelarias en Chile. Diagnóstico del cumplimiento de los estándares internacionales de derechos humanos* (Survey of prison conditions in Chile. Assessment of compliance with international human rights standards) Available here: <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/639/Estudio%20general?sequence=4>.

²⁴ *Ibid*, pages 180-185.

²⁵ Solicitud folio AK006W-0000519, dated 3 July 2012.

are taken for medical tests outside their detention centres are not given food during the day. The detainees are also denied the possibility of wearing clothes in line with their gender identity and, as a result of being segregated from the rest of the population, are excluded from the workshops for social rehabilitation that are available to the rest of the prison population.

Contacts and locations to visit:

- **Frente de la Diversidad Sexual** – www.frentedeladiversidad.cl, contacto@frentedeladiversidad.cl, Calle Domínica N° 14, Barrio Bellavista, Recoleta, Santiago, Teléfono: +56983435589.
- **Sindicato Independiente de Trabajadoras Sexuales Trans Amanda Jofré** – www.amandajofre.cl, contacto@amandajofre.cl, Calle Moneda N° 1719, Departamento 12, Santiago, Teléfono: +5696330033.
- **Fundación SAVIA** – www.fundacionsavia.cl, savia@fundacionsavia.cl, Calle Teguvalda N° 1832 Ñuñoa, Santiago, Teléfono +560222690937.
- **Agrupación Nefertiti** – Calle Presidente Salvador Allende Gossens # 1857, Iquique. Teléfono: +56572434051
- **Agrupación Transgénero Arcoiris** – Calle Washington # 2531, Antofagasta. Teléfono: +56982854298

Detention centres where complaints have been made by the LGBT population:

- **Centro de Detención Preventiva (CDP) Santiago Sur** – Avda. Pedro Montt N° 1902, Santiago. Teléfono: +56027151488.
- **Centro de Cumplimiento Penitenciario (CCP) del Bio Bio** – Camino a Penco N° 450 B, Concepción. Teléfono: +56413161044.
- **Centro de Detención Preventiva (CDP) de Quillota** – Chacabuco N° 999, Quillota. Teléfono: +5633316697.
- **Centro de Detención Preventiva (CDP) de Calama** – Granaderos N° 2107 Calama. Teléfono: +5655592523.
- **Complejo Penitenciario (CP) de Arica** – Kilómetro 2063 ruta 5 norte Cuesta de Acha s/n Arica. Teléfono +5658203443.
- **Complejo Penitenciario (CP) de Alto Hospicio** – Ruta A 6-16 KM. 6 ½ Sector Huantajaya, Alto Hospicio. Teléfono +5657512603.
- **Centro de Cumplimiento Penitenciario (CCP) de Antofagasta** – Arturo Prat N° 1147 Antofagasta. Teléfono +5655592795.