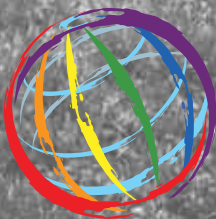


# MAPPING **Trans Rights** IN CHILE



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Human Rights for LGBTIQ People Everywhere

## About OutRight

Every day around the world, LGBTIQ people's human rights and dignity are abused in ways that shock the conscience. The stories of their struggles and their resilience are astounding, yet remain unknown—or willfully ignored—by those with the power to make change. OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, works alongside LGBTIQ people in the Global South, with offices in six countries, to help identify community-focused solutions to promote policy for lasting change. We vigilantly monitor and document human rights abuses to spur action when they occur. We train partners to expose abuses and advocate for themselves. Headquartered in New York City, OutRight is the only global LGBTIQ-specific organization with a permanent presence at the United Nations in New York that advocates for human rights progress for LGBTIQ people.

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# **MAPPING** **Trans Rights** **IN CHILE**



**OUTRIGHT**  
ACTION INTERNATIONAL

Human Rights for LGBTIQ People Everywhere

With the collaboration of Fundación TranSítar.



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Front cover: Selenna, a trans girl.

Fundacion TranSitar collection.

Photo: Lorna Remmele



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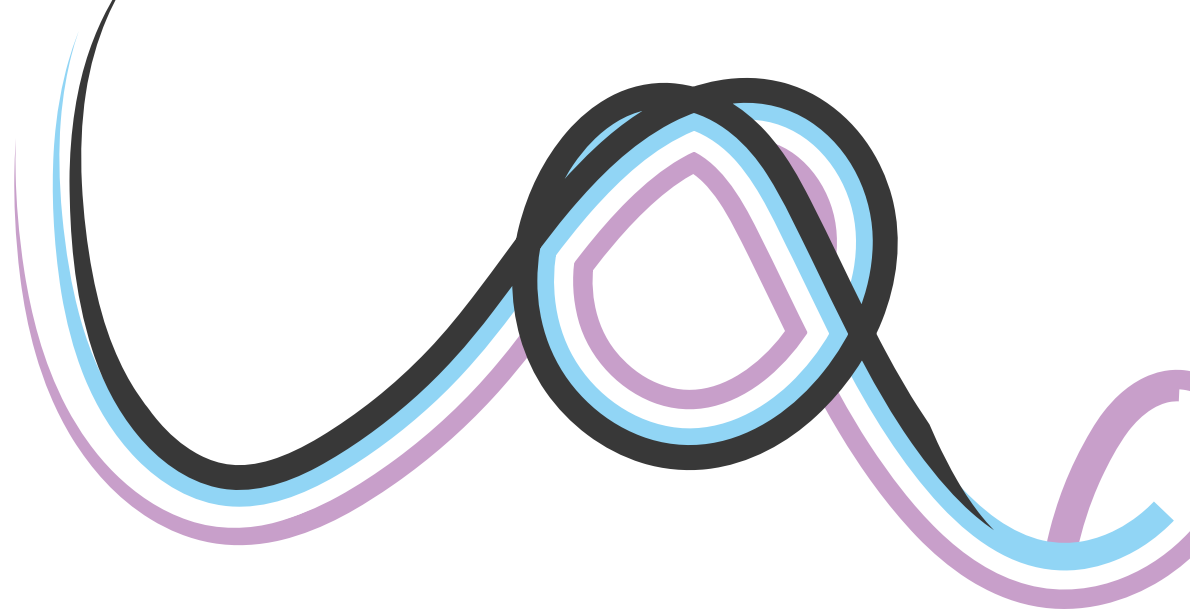
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# Terminology<sup>1</sup>

<b>Feminization:</b>	The process of making something more characteristic of, or associated with, women.
<b>Gender:</b>	A social construct used to classify a person as a man, woman, or some other identity. It is fundamentally different from the sex one is assigned at birth.
<b>Gender Binarism:</b>	The idea that human gender exists in only two forms: masculine and feminine. The term also describes the system in which a society divides people into male and female gender roles, gender identities and attributes.
<b>Gender Identity:</b>	Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
<b>Homophobia:</b>	Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people. Because the term homophobia is widely understood, it is often used in an all-encompassing way to refer to fear, hatred and aversion towards LGBT people in general.
<b>Intersex:</b>	An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people

<sup>1</sup> These definitions have been drawn from the following sources: the Yogyakarta Principles; the United Nations Free and Equal Campaign; the University of California, Los Angeles' LGBT Campus Resource Center; the University of California, San Francisco LGBT Resource Center; and Amnesty International.



<b>Lesbophobia:</b>	Lesbophobia is an irrational fear of, hatred or aversion towards lesbian people.
<b>LGBT:</b>	LGBT stands for “lesbian, gay, bisexual and transgender.” While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities.
<b>LGBTI:</b>	Lesbian, gay, bisexual, transgender and intersex.
<b>Pathologization:</b>	The process of regarding or treating (someone or something) as psychologically abnormal or unhealthy.
<b>Psychiatrization:</b>	The process of treating or analyzing (someone or something) psychiatrically.
<b>Sex:</b>	A categorization based on the appearance of the genitalia at birth.
<b>Sexual Diversity:</b>	This term refers to the full range of sexuality which includes all aspects of sexual attraction, behavior, identity, expression, orientation, relationships and response. It refers to all aspects of humans as sexual beings.
<b>Sexual Orientation:</b>	Refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
<b>Sexuality:</b>	A person’s exploration of sexual acts, sexual orientation, sexual pleasure and desire.
<b>SOGI:</b>	Sexual Orientation and Gender Identity.
<b>Trans / Transgender:</b>	Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical. Transwomen identify as women but were classified as males when they were born. Transmen identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.
<b>Transition:</b>	This term is primarily used to refer to the process a gender variant person undergoes when changing their bodily appearance either to be more congruent with the gender/sex they feel themselves to be and/or to be in harmony with their preferred gender expression.
<b>Transphobia:</b>	An irrational fear, hatred or aversion towards transgender people.
<b>Yogyakarta Principles:</b>	A set of international principles relating to sexual orientation and gender identity, comprising a guide to human rights which affirms binding international legal standards with which all States must comply.





# Executive Summary

**The current panorama for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights in Chile is complex.**

There is an executive branch with the political will to encourage social inclusion and respect for human rights, in a process that fosters national political awareness aimed at lasting institutional transformation. A number of conservative legislators, highly influenced by the Catholic Church, refuse to reconsider—from a human rights perspective—issues such as abortion and the recognition of LGBTI rights. A number of more

progressive legislators rely on the advocacy work of civil society organizations to promote LGBTI initiatives. At the same time, LGBTI civil society organizations in Chile have formed and organized themselves to foster cultural changes, dismantle stereotypes, and exert pressure for the fulfillment of the country's international commitments with regard to human rights. They have also played a vigorous role in making their causes public, identifying and demanding solutions, and monitoring the attainment, guarantee and implementation of LGBTI rights.<sup>2</sup>

**At the same time, LGBTI civil society organizations in Chile have formed and organized themselves to foster cultural changes, dismantle stereotypes, and exert pressure for the fulfillment of the country's international commitments with regard to human rights.**

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<sup>2</sup> Activists of the Observatorio de Derechos Humanos y Legislación [The Observatory of Human Rights and Legislation], such as Andrés Rivera Duarte (part of the former Organización de Transexuales por la Dignidad de la Diversidad – OTD) and Camilo Godoy, as well as lawyer Ximena Gauché have been central to the promotion, advocacy and changes to the bill. See also, the Frente de la Diversidad Sexual (FDS), a coalition of 12 organizations and Chile's main network of LGBTI organizations among them, the new Organizando Trans Diversidades (OTD de Chile). This coalition was formed in May 2013 when, then Chilean presidential candidate, Michelle Bachelet invited some LGBTI organizations to form a working group for the “Pacto de la Nueva Mayoría” (New Majority Coalition) primaries. The FDS is configured as a space for participation and dialogue for sexual diversity organizations, of a secular character and without any specific political affiliations. For more information regarding the FDS see:

This short report sets out the research findings of OutRight Action International in collaboration with Fundación TranSítar, in relation to respect for the human rights of transgender people in Chile, in law, policy and practice. The report considers the situation of the rights to legal gender recognition, health, education and work, as well as touching on the situation of trans people in prison. The report concludes with a series of recommendations to the Chilean authorities to ensure greater respect for the rights of transgender people.

The report shows that Chile enjoys a reasonably robust human rights framework – the country has ratified the major human rights treaties and conventions, and human rights protections are included in the imperfect Constitution and flawed Anti-Discrimination Law.

As the concept of a human right to legal gender recognition – that everyone has the right to have their chosen gender identity legally recognized – gains traction internationally, the Chilean government is supporting a gender identity bill. This bill, if it becomes law, will ensure gender identity is recognized as a human right<sup>3</sup>, and will help guarantee equality before the law for trans people and protect them from discrimination. Currently, an individual wishing to change their registered name must file a petition in a civil court together with psychological and psychiatric

diagnoses and certificates attesting surgical or pharmacological treatments.

While the Chilean Constitution guarantees free and equal access to healthcare services, and national health policies *Circular 21* and the *Vía Clínica* have been developed to regulate healthcare for trans people, trans people have not been properly consulted, and the policies are badly flawed. The policies fuse transgender health needs with HIV/AIDS care and pathologize transgender identity, while resources for providing access to transition and gender reassignment medical procedures are inadequate.

The Chilean Constitution guarantees the right to education without discrimination, but for trans people, discrimination in the education system is constant and begins early on.

However, trans activists have managed to train and raise awareness among teachers, students, and school administrators about gender identity, and some schools, such as the El Trigal-Maipú School (Colegio El Trigal-Maipú) are leading the way for trans inclusion.

With regard to the right to work, the situation of labor rights for trans people is characterized by the absence of public policies, a lack of commitment from company owners to offer jobs to trans people, the lack of a public institution that trains trans people and promotes vocational training, abuse by employers, and the inexistence of regulations to guarantee job security.

Finally, trans people in detention face treatment that breaches international principles for the treatment of prisoners and may amount to a violation of the prohibition on ill treatment.

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<http://www.frentedeladiversidad.cl>

3 See Inter-American Court H.R., Case of Atala Rizzo and Daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, paras. 83-93. In this case the Court held that sexual identity and gender identity were categories protected by Article 1(1) of the American Convention on Human Rights under the term “any other social condition”. The full text of the Court’s Judgment is available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf).



## Key Recommendations

**Key recommendations to the Chilean authorities include:**

- **Amend the Anti-Discrimination Law** to bring it in to line with international human rights law, removing the hierarchy of rights;
- **Enact the gender identity bill** to ensure the right to legal gender recognition, incorporating the legal recognition of trans and intersex girls, boys and teenagers as an administrative process;
- **Depathologize gender identity**, and eliminate pathologization as a requirement to access transition and gender affirming procedures;
- The Ministry of Education should **include trans children in all of its educational programs** and develop, through the *Centro de Perfeccionamiento* (Learning Resource Center), a teacher-training program to enhance understanding of and respect for gender identities;
- Borrowing from Principle 12 of the Yogyakarta Principles, take all necessary legislative, administrative and other measures to **eliminate and prohibit discrimination on the basis of gender identity** in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration; and
- **Recognize and validate the gender identity of imprisoned trans people** and respect their gender expression, so that they have access to make-up, can dress according to their gender identity, can be called by their chosen name, have access to supervised hormone treatments, and enjoy conjugal visits.

# Methodology

**The findings of this report are based on interviews and desk research.**

Those interviewed included trans people, human rights activists, lawyers and Chilean officials.

OutRight Action International and partners extend their thanks to those who provided information for this report.



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DE NIÑOS Y  
JÓVENES TRANS



# Human Rights Framework

## International Obligations

**Application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination.**

Everyone, irrespective of their sexual orientation and gender identity (“SOGI”), is entitled to enjoy the protection of international human rights law with respect to all human rights – civil, political, economic, social and cultural.<sup>4</sup>

Non-discrimination is a core human rights principle embodied in the Charter of the United Nations (UN), the Universal Declaration of Human Rights (UDHR) and core human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Non-discrimination clauses in international instruments typically require that human rights are made available to everyone without discrimination, and States ensure that their laws, policies and programs are not discriminatory in impact.<sup>5</sup> Chile is a State party to the ICCPR and ICESCR.

The specific grounds of discrimination referred to in the core human rights treaties are not exhaustive. In its general comment No. 20 on discrimination, for example, the Committee on Economic, Social and Cultural Rights – the expert UN body that monitors implementation of the

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<sup>4</sup> UNITED NATIONS. Discrimination and violence against individuals based on their sexual orientation and gender identity. Report of the Office of the United Nations High Commissioner for Human Rights to the UN Human Rights Council. May 4 2015. The full text of the Report is available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E)

<sup>5</sup> UNITED NATIONS. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the Office of the United Nations High Commissioner for Human Rights to the UN Human Rights Council. November 17 2011. The full text of the Report is available at: [http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf)

ICECSR – observed that “gender identity is recognized as among the prohibited grounds of discrimination.”<sup>6</sup>

The Yogyakarta Principles on the Application of International Human Rights Law in Relation

**Although the purpose of the law is to restore rights in cases of arbitrary discrimination, judges, protected by an established hierarchy of rights, may not only fail to combat discrimination but, in fact, promote it.**

to Sexual Orientation and Gender Identity (the “Yogyakarta Principles”) – developed and adopted by a meeting of human rights experts in Yogyakarta, Indonesia, in November 2006 – provide a universal guide to applying international human rights law to abuses experienced by Lesbian, Gay, Bisexual and Transgender (“LGBT”) people.<sup>7</sup>

Chile is a State party to the American Convention on Human Rights and has accepted the jurisdiction of the Inter-American Court of Human Rights, to which the Inter-American Commission

on Human Rights (IACHR) and State parties to the Convention can refer cases. The Court has found, in a case involving Chile, that sexual orientation and gender identity are prohibited grounds of discrimination under the term “other social condition” in the Convention.<sup>8</sup>

The Inter-American Commission on Human Rights, which has a mandate to promote respect for human rights in the Organization of American States (OAS) region and acts as a consultative body to the OAS in this area, has created a Rapporteurship “on the Rights of Lesbian, Gay, Bi-

sexual, Trans and Intersex Persons (LGBTI)”<sup>9</sup> and has made strong statements to support the “full enjoyment and exercise of the human rights of trans persons.”<sup>10</sup> The Inter-American Convention against All Forms of Discrimination and Intolerance, which Chile has signed but not yet ratified and deposited, explicitly lists gender identity and expression as prohibited grounds of discrimination.<sup>11</sup>

6 See paragraph 32, UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20. Full text available at: <http://www.refworld.org/docid/4a60961f2.html> and Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the Office of the UN High Commissioner for Human Rights to the UN Human Rights Council. November 17 2011. For full text, see supra note 5.

7 The Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity. March 2007. Full text available at: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

8 See Inter-American Court H.R., Case of Atala Rizzo and Daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239. For the full text of the Court’s Judgment see supra note 3.

9 IACHR. The IACHR creates Rapporteurship to address issues of Sexual Orientation, Gender Identity, Gender Expression, and Body Diversity. Inter-American Commission on Human Rights. November 25 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/094.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/094.asp)

10 IACHR. On Transgender Day of Remembrance, the IACHR Expresses Concern About the Situation of Trans Persons in the Americas. Inter-American Commission on Human Rights. November 21 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/138.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/138.asp)

11 ORGANIZATION OF AMERICAN STATES (OAS). In-ter-American Convention against All Forms of Discrimination and Intolerance, Signatories and Ratifications. The full text of the Convention is available at: [http://www.oas.org/en/sla/dil/docs/inter\\_american\\_treaties\\_A-69\\_discrimination\\_intolerance.pdf](http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-69_discrimination_intolerance.pdf)



## National Law

Chile's political constitution, when interpreted literally and not contextually, more often than not becomes an obstacle that hinders the LGBTI population's full enjoyment of its rights.

The Anti-Discrimination Law 20.609 of 2012 (LAD) includes sexual orientation and gender identity as prohibited grounds of discrimination, with a fundamental goal of creating a judicial mechanism to restore rights in cases in which people are subjected to arbitrary discrimination, but it has suffered from two main limitations that require urgent review.

The first is substantive and related to the establishment of a hierarchy of rights. The second is procedural, and related to the lack of clarity around responsibility and resources for its implementation.<sup>12</sup> The first limitation refers to the fact that in the interpretation of this law, the judge has the power to withdraw the arbitrary nature of the discrimination, establishing it as reasonable if the act is protected by another fundamental right in the Constitution (e.g. freedom of religion) – thus the judge may not consider the context or assess the facts in their decision. Although the purpose of the law is to restore rights in cases of arbitrary discrimination, judges, protected by an established hierarchy of rights, may not only fail to combat discrimination but, in fact, promote it.<sup>13</sup>

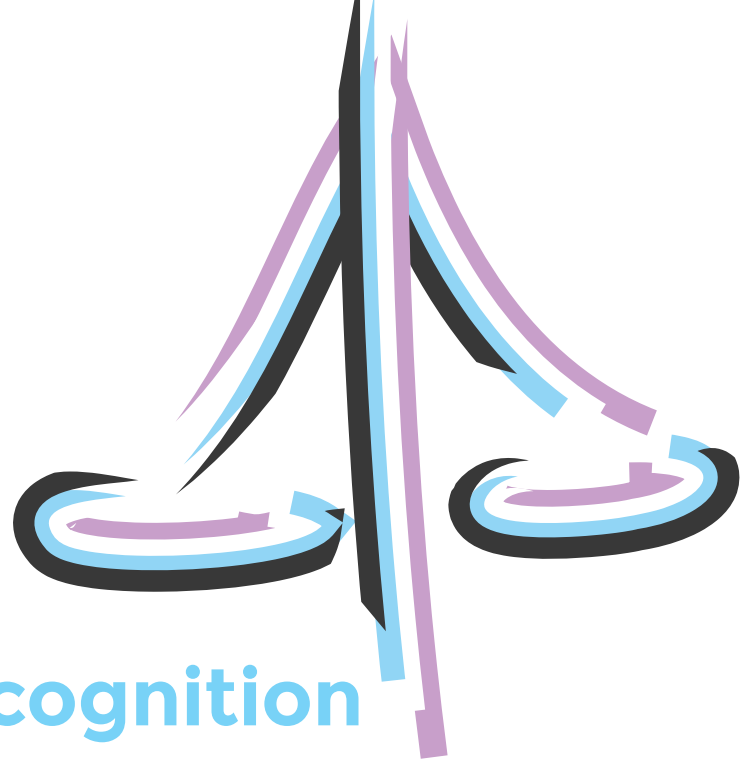
12 For an analysis of these problems, see IGLHRC, et al. Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Chile. Shadow Report presented to the UN Human Rights Committee. July 2014. Available at: <https://www.outrightinternational.org/sites/default/files/Chile0714ForUpload.pdf>

13 See CODDOU, Alberto, SCHONSTEIN, Judith and VIAL, Tomás. Anti-Discrimination Act: Progress and

The second limitation has to do with the lack of clarity about the bodies and procedures responsible for defining, implementing, and monitoring the effectiveness of the LAD. In a welcome move, the Chilean State is due to implement a statute that grants specific institutions responsibilities and resources to fight against discrimination.

shortcomings in the protection of equality and non-discrimination in Chile. Annual Report on Human Rights in Chile / Universidad Diego Portales, School of Law. Santiago de Chile, 2013, p. 306. Available at: [http://www.derechoshumanos.udp.cl/wp/wp-content/uploads/2013/10/libro\\_DD\\_HH\\_capitulo8.pdf](http://www.derechoshumanos.udp.cl/wp/wp-content/uploads/2013/10/libro_DD_HH_capitulo8.pdf) retrieved on May 25, 2014; and, Inter-American Court of Human Rights., Case of Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239. Available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf). Both quoted in IGLHRC, et al. Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Chile, supra note 12.





# Legal Gender Recognition

**Internationally, the concept of a human right to legal gender recognition – that everyone has the right to have their chosen gender identity legally recognized, in official documents and registries for example – is gaining traction.**

UN mechanisms have called upon States to legally recognize transgender persons' preferred gender, without abusive requirements, including sterilization, forced medical treatment or divorce.<sup>14</sup> The Human Rights Committee – the expert UN body that monitors implementation of the ICCPR – has expressed concern regarding the lack of arrangements for granting legal recognition of transgender people's identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.<sup>15</sup>

The right to legal gender recognition is linked to and embedded in the rights to recognition before the law and to privacy, and the Yogyakarta Principles provide authoritative guidance in this regard. The right to recognition before the law is enshrined in the UDHR at Article 6 and in the ICCPR at Article 16, while Principle 3 of the Yogyakarta Principles provides that States should “[t]ake all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity.” On the right to privacy, enshrined in the UDHR at Article 12 and in the ICCPR at Article 17, Principle 6 of the Yogyakarta Principles provides that States should “[e]nsure the right of all persons ordinarily to choose when, to whom and how to disclose

<sup>14</sup> See paragraph 8, UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: concluding observations of the Human Rights Committee: Ireland, 30 July 2008, CCPR/C/IRL/CO/3. Full text available at: <http://www.refworld.org/docid/48c4ff452.html>; and paragraph 7, UN Human Rights Committee (HRC). Concluding observations on the fourth periodic report of Ireland, 19 August 2014, CCPR/C/IRL/CO/4. Full text available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRL/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRL/CO/4&Lang=En)

<sup>15</sup> Ibid.

information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.”<sup>16</sup>

In Chile, the government has supported a gender identity bill, which has been in legislative process since May 2013. This bill, if it becomes law, will ensure gender identity is recognized as a human right,<sup>17</sup> and will help guarantee equality before the law for trans people and protect them from discrimination. The bill’s ongoing legislative process has taken place alongside the issuing of executive decrees and public policies aimed at improving respect for the human rights of trans people, including to health and education.

## The Gender Identity Bill

### General Framework

The gender identity bill has been in legislative process since 2013. As a result of vigorous debate, there have been numerous amendments. Four aspects have, however, remained the same:

- **Goal:** To regulate gender identity so as to implement a procedure for an individual’s sex rectification and name change in the Civil Registry and identification documents when the petitioner’s sex and name are not consistent with their gender identity.
- **Definition of gender identity:** As defined in Article 2 of the bill and based on the

Yogyakarta Principles, gender identity is “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.”

- **Limitation of requirements:** The bill guarantees the enjoyment of gender identity rights and the recognition of each person’s inner experience of gender. As such, it prohibits any medical, psychological, pharmacological and/or other type of treatment to be considered a requirement to access this right.
- **Non-contentious nature of the process:** The process does not require a legal claim or the intermediation of a lawyer.

However, the following two aspects of the bill have been and continue to be the subject of debate and amendment:

- The reformulation of the procedure from its first version, as a non-contentious judicial procedure dealt with by family courts, to one that is merely administrative and non contentious. The Supreme Court reviewed this issue following a request by the Senate Human Rights Commission and gave support to this shift in the bill, and the new version is now in the first stage of consideration in Congress.<sup>18</sup>
- The debate on the scope of the protection and procedures to guarantee the rights of trans children.

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<sup>16</sup> See the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, *supra* note 7.

<sup>17</sup> See *supra* note 3.

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<sup>18</sup> Cf. Official letter No 129-2015, Article 2, Bill report 46-2015, Judicial authority, Republic of Chile, Supreme Court, Plenary Court, Santiago, November 23, 2015.

## Brief History of the Bill<sup>19</sup>

### First Stage: The Judicial Process

In May 2013, senators Camilo Escalona, Ricardo Lagos, Juan Pablo Letelier, Lily Perez and Ximena Rincón proposed a bill (catalogued in bulletin No. 8924-07) to recognize and protect gender identity. Initially, the bill contained 11 articles and one transitory article, granting family courts the competence to rule on name and sex changes and rectify birth certificates. The bill included the possibility that the person applying for rectification may face opposition from third interested parties. Furthermore, the bill did not regulate the possibility of trans children claiming their right to gender identity.

After two years of presenting and reviewing amendments in Congress, on November 4 2015, the Senate Human Rights Commission approved a final text with 15 articles and two transitory articles that address the possibility of amending the birth certificates of trans children and minors, and provide for the creation of a special procedure before the family courts to do so.<sup>20</sup> The procedure would be non-contentious and would not require a legal claim.<sup>21</sup>

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19 This section is organized based on documents produced by Constanza Valdés Contreras, Legal Advisor to Organizando Trans Diversidades (OTD de Chile) and by the text of the bill in official bulletin No 8924-07. For information regarding the legislative history of the gender identity bill (official bulletin No. 8924-07), see: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9331&prm-BL=8924-07](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9331&prm-BL=8924-07)

20 Official Letter No. DDHH/74/15 through which the President of the Human Rights Commission of the Senate presented the gender identity bill to the Supreme Court for constitutional control. The full text of the letter of presentation as well as the Spanish version of the submitted bill is available at: <https://www.camara.cl/pley/pdfpley.aspx?prmID=20606&prmTIPO=OFICIOPLEY>

21 Article 102, paragraph 3 of Law 19.968, highlights that: "The application may be filed in writing and the judge will be able to settle the issue forthrightly, unless s/he considers it necessary to hear the interested parties. If this were to happen,

The bill also eliminated the possibility of opposition by a third party during the process, when the petitioner is over 18 years of age.

Through official letter N° DDHH/74/15,<sup>22</sup> the Senate Human Rights Commission submitted the approved bill to the Supreme Court, requesting its opinion, especially in relation to whether Articles 5, 6 and 9<sup>23</sup> corresponded to the provisions of organization and power of the courts. Through official letter N°321/SEC/13,<sup>24</sup> the Supreme Court previously pointed out that the said procedure must be heard by a civil judge, and harmonized with the procedure that already exists in Law 17.344, regarding changes of name and surname.

Since 2013, parliamentarians have worked alongside local civil society organizations to develop the bill.

### Second Stage: An Administrative Process

On November 23 2015, the Supreme Court<sup>25</sup> issued its opinion on the bill and supported the administrative process for adults and the judicial process in family courts for children

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s/he will summon a hearing, which they will attend with their backgrounds in order to settle the non-contentious issue heard."

22 See supra note 20.

23 These articles are the second subparagraph of Article 5 on the requirements to access the right, the final subparagraph of Article 6 and Article 9° of the bill approved by the Senate Human Rights Commission. All of these articles refer to the prohibition for the courts to demand any medical, pharmacological or other kinds of tests or treatment as a requisite for accessing the right.

24 For the text of this official letter, see: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9331&prm-BL=8924-07](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9331&prm-BL=8924-07)

25 SUPREME COURT OF CHILE. Official Letter No 129-2015. The full text of the letter is available at: <https://www.camara.cl/pley/pdfpley.aspx?prmID=20628&prmTIPO=OFICIOPLEY>

and minors. The Court, which analyzed the provisions put forward by the Senate Human Rights Commission, confirmed the constitutionality of the most radical shift in the premise of the bill; that is, that given that "... the procedure is fundamentally based on the claimant's will, it can be assigned to an administrative procedure before an official of the Civil Registry. This provides greater protection of the claimants' dignity by not exposing them to judicial procedures, reserving appearance before the court to cases that challenge the administrative authority or when dealing with minors."

In the December 9, 2015 session of the Senate Human Rights, Nationality and Citizenship Commission, parliamentarians, and the Minister of Government, Marcelo Díaz, discussed whether it should be family courts that deal with the name and sex change procedure or whether this could be carried out as an administrative process. This led to the bill including a special administrative procedure for people over 18, while children and minors still have to follow judicial processes. Subsequently, the President of the Commission, Jacqueline Van Rysselberghe, in accordance with Article 27 of the Regulations of the Senate,<sup>26</sup> sent the bill to the Senate Commission on the Constitution, Legislation, Justice and Regulations for review. As a consequence of these new developments, on January 6 2016, the extreme urgency status of the bill was withdrawn and simple urgency status entered into effect.<sup>27</sup>

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26 The Article highlights that, "The Chamber and Committees may request reports from the Committee on Constitution, Legislation, Justice and Regulations in cases where doubt on the constitutionality of the issue arises, as far as this is possible within the constitutional, legislative and regulatory time-limit established for its settlement."

27 Urgency is defined as the president's exclusive constitutional authority to grant certain bills a priority status (for their knowledge and release by Congress), requiring

The Frente por la Diversidad Sexual, a coalition of 12 organizations<sup>28</sup>, and Fundación TranSítar<sup>29</sup> are behind this struggle for legal gender recognition. Although they recognize the importance of the bill, they demand that the process for changing registered gender and name be an administrative one, as a way of respecting the autonomy and dignity of trans adults and minors. The legislative process is going to be even longer now and there is no guarantee that the bill will become law, but the organizations are fighting for nothing less

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that Congress act within thirty (Simple Urgency), fifteen (High/Extreme Urgency) or six (Immediate Discussion) days (depending on the degree of urgency). See Chilean Glossary of Legislative Terms: [http://www.bcn.cl/ayuda\\_folder/glosario](http://www.bcn.cl/ayuda_folder/glosario). On May 10th, 2016 the executive gave the bill the urgency status once again. In spite of this action, currently the Commission on Constitution has 30 bills to review, a situation that will probably delay the priority of the gender identity bill.

28 Those organizations are: ACCIONGAY, Fundación Iguales, MUMS, Asociación Organizando Trans Diversidades (OTD-Chile), Fundación Todo Mejora, Valdiversa, Agrupación Lésbica Rompiendo el Silencio, Fundación Daniel Zamudio, Red de Psicólogos de la Diversidad Sexual, SOMOS COQUIMBO, Mogaleth. For more information regarding the FDS see supra note 2.

29 Foundation of Families of Trans Children and Youth. For more information see: <https://www.facebook.com/fundaciontransitar/> "Fundación TranSítar has existed for a relatively short time," says Niki Raveau, Vice President of the Foundation. "We are the only organization in Chile that especially supports and accompanies trans girls, boys and teenagers." Thirty-one families with children between the ages of 4 and 21 participate in the Foundation. Six-year-old Selenna Pérez is the first girl in the country to be living according to her gender identity, which she has been doing for the past two and a half years already. In 2015, the Foundation marched for the rights of trans children for the first time, and released "Niñxs Rosadxs y Niñxs Azules" (Pink Kids and Blue Kids), the only documentary on trans children released in the country so far. The Foundation also provides training to healthcare professionals (the Mental Health Center, COSAM, which is part of primary health care in Chile) and in educational centers; it has been able to enroll numerous trans children in primary and secondary schools; it finances hormone treatments; and it has an agreement with the Red de Psicólogos de la Diversidad Sexual (Psychological Network for Sexual Diversity) for the provision of family care and research. The Foundation is also part of the political commission for the gender identity law of the Frente de la Diversidad Sexual, pushing forward the demand for the rectification of trans minors' birth certificates by administrative procedure.

than full autonomy as a basic condition for full citizenship; there is, therefore, no going back at this stage.

## **The Debate on Trans Children and the Gender Identity Bill<sup>30</sup>**

Trans children and minors constitute one of the most vulnerable sectors of the population, given the numerous problems that directly affect them in terms of education, health and social exclusion. In the field of education, trans children find obstacles to registering in schools due to the ignorance of authorities and, even when they are able to register, the authorities do not know how to integrate them and guarantee their safety, well being and permanence in educational establishments.

### **Trans girls and boys know exactly who they are; it is the judges and the Chilean State who do not.**

Healthcare for trans girls, boys and teenagers in private or public health institutions has been equally problematic, as health professionals do not understand the importance of respectful treatment or the importance of calling them by their social name if they have to go to the school infirmary, the bathroom, the hospital, or receive any other service.

However, one of the greatest conflicts in the lives of trans children is the social exclusion they are subject to day-to-day in their own

families, neighborhoods and other social and public spaces, as well as in the constant demands to conform to gender stereotypes and behaviors.

As mentioned above, the Supreme Court<sup>31</sup> issued an official response to bill 46-2015, whereby it highlights the will of the petitioner as sufficient argument to process the rectification of sex and the change of name as an administrative process held before the Civil Registry. However, this option is not applicable to children and minors, as the Court believes that for them, the process should be judicial and dealt with in the family courts:

“It seems reasonable to consider that the competent court to hear the amendment of name and/or sex based on the recognition of the right to gender identity, should be a court which deals with family matters, given that it is such courts that have been created especially to hear and rule on issues whereby the interests of the girls, boys and minors are compromised.”<sup>32</sup>

The Senate Human Rights, Nationality and Citizenship Commission presented Article 7 regarding rectification of sex and name change for children and minors as follows: “From the petition presented by the boy, girl or teenager ... Once the petition has been received, the judge will summon the child or teenager to a hearing, within a time limit of no longer than a fortnight, so that s/he can be heard especially to guarantee her or his

30 This section was prepared by Fundación TranSítar de Chile, Informe sobre proyecto de ley de identidad de género y personas trans menores de edad en Chile, by Niki Raveau, a historian and vice-president of the Foundation, Santiago de Chile, January 2016. Document on file with OutRight Action International.

31 See supra note 25

32 Cf. SUPREME COURT OF CHILE. Official Letter No 129-2015, 11th numeral. For the full text of the letter see supra note 25.



higher interests and s/he will be designated a guardian *ad litem* to ensure her or his representation and interests during the procedures. In said hearing, the girl, boy or teenager will ratify the facts and grounds on which the petition is made and s/he will give express consent through the channels indicated for her or his age.”<sup>33</sup>

According to Fundación TranSítar, the final text of the bill and the Supreme Court approach to the bill regarding children and teenagers fails in two areas: first, it does not frame the precariousness of institutional support for children’s issues in the country; and second, it does not consider the principle of progressive autonomy when it places the decision on the right to gender identity for children and teenagers in the hands of a family judge. In other words, it does not recognize the capacity of children and teenagers to exercise their rights. Organizando Trans Diversidades (OTD de Chile); the legal advisor of OTD de Chile, Constanza Valdés; and Fundación TranSítar wrote a memorandum on the gender identity bill to demand that legislators include girls, boys and teenagers in the administrative procedure:

“According to the principle of progressive autonomy, a girl, boy or teenager can exercise her or his rights for themselves, including their right to decide on their gender identity. This principle respects the will and interests of the minors, allowing them to access an amendment of their birth certificates through administrative channels with the consent of their legal guardians. An example of a concrete application is the gender identity law in

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33 Cf. Official bulletin No 8924-07, Article 7. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9331&prmBL=8924-07](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9331&prmBL=8924-07)

Argentina, Law 26.743, which allows minors to amend their name and sex through their legal guardians, bearing in mind the principle of progressive capacity and the best interests of the child as established in the Convention on the Rights of the Child.”<sup>34</sup>

What does a judge understand by child participation and progressive capacity?

“The children in our Foundation”, says Niki Raveau of Fundación TranSítar, “are capable of affirming their gender as early as age 4 or 5. Trans girls and boys know exactly who they are; it is the judges and the Chilean State who do not. Article 12 N°2 of the Convention on the Rights of the Child,<sup>35</sup> ratified by Chile, establishes that children must be given the opportunity to be listened to in all administrative or legal procedures. In accordance with the above, the bill on Child Rights Guarantees System, message N°950-363, establishes in Article 32<sup>36</sup> an administrative procedure for the protection of rights, allowing an administrative hearing so that the child can exercise their right to be heard.

It follows then, that an administrative procedure for the amendment of birth certificates for girls, boys, and minors is viable in the institutional

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34 The Political Commission of the Frente por la Diversidad Sexual and Fundación TranSítar disseminated the text among parliamentarians and civil society but this is not available online. The text is on file with OutRight Action International.

35 UNITED NATIONS. Convention on the Rights of the Child. Adopted by General Assembly resolution 44/25 of November 20, 1989. The full text of the Convention is available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

36 CHILE. PRESIDENCY OF THE REPUBLIC. Proyecto de Ley de Sistema de Garantías de los Derechos de la Niñez, mensaje No. 950-363 [Bill on the Child Rights Guarantees System, message N°950-363]. Santiago, September 2015. Full text of the bill available at: <http://www.movilh.cl/documentacion/2016/Proyecto-derechos-de-la-ninez.pdf>

structure, considering the discussion of the aforementioned bill and Chile's obligation to adjust its institutional statutes to comply with the Convention on the Rights of the Child."

## Honoring Trans Children

It is important to document human rights violations and report on policies and legal debates, but also to be able to identify and give account of the strength, courage and complexity of the rights-holders' struggles for recognition. As presented below, Fundación TranSítar highlights the outstanding potential of trans children for deconstructing gender stereotypes, and Andrés Rivera Duarte presents a case of discrimination in school against a 5 year-old girl.

Fundación TranSítar reminds us<sup>37</sup> that it is inappropriate to disseminate gender expressions of trans children based on simplifications such as "an accentuated aversion to female clothing" or a tendency towards "urinating sitting down". There is no pattern according to which all trans girls have an "aversion to violent games" or to their penis. Often, we do not look beyond the binarism that sanctions being "a real man", a "real woman", a "masculine trans," or a "feminine trans." But for children, such a perspective is an imposition from adults. It is true that sometimes a trans childhood can be schematic; 'very pink' boys and 'very blue' girls, 'princess-like' girls and 'prince-like' boys. But that only happens because we are used to not looking beyond the surface of what blends us into our conventional environment. A girl from Fundación TranSítar exemplifies, in her conversation, the importance of the first person in

the account of trans children's experiences:

"I am going to marry Juanito"

"Ok," we said.

We are still in the field of binarism, the wedding cake has a white figure and a black one on top.

"But," she adds, "Juanito (another boy from Fundación TranSítar) is going to have the babies."

We pay a lot of attention to this, because making such statements turns the roles of maternity, paternity and genitality on their heads. It means detaching from the sex-genital factor, altering the balance of sex, roles, and customs (and the discomfort arising from such customs). Instead, let's get used to building genders and sexualities that are freer and more real, and avoid marking human beings with customs and stereotypes."<sup>38</sup>

## Andrea's Petition<sup>39</sup>

Andrea is a 5 year-old trans child who was discriminated against because of her gender identity at the Pumahué de Chicureo School. On March 2 2015, the child's parents asked the school to recognize and respect her female gender identity. The request, accompanied by a certificate from psychologist Gabriela Gómez Briones—who specializes in gender identity and sexual diversity—and from Andrés Rivera Duarte, a human rights consultant, included the following requests:

- Respect for the girl's gender identity;

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37 Cf. Fundación TranSítar report on file with OutRight Action International, January 2016. See *supra* note 30.

38 Ibid.

39 This section was prepared by consultant and activist, Andrés Rivera Duarte.



- Recognition of her female name;
- Permission for the child to be able to use the female restrooms;
- Permission for the child to be able to wear a girl's uniform;
- Permission for the child to be able to use a backpack with feminine motifs.

The school principal met with the child's parents and Gabriela Gómez Briones two weeks after having received the petition. On March 12 2015, the school principal presented them with a document in which the school confirmed its refusal to implement such measures.

Faced with this situation, the parents reported the school's act of discrimination to the Superintendence of Education and filed a complaint before the civil court of Colina for arbitrary discrimination, as contemplated in Article 3 of Law 20.609.

As of February 2016, these actions have achieved the following results:

- The Superintendence of Education found the school guilty of misconduct for incorrectly applying its internal regulations on school coexistence and arbitrarily discriminating against the student, and fined the school. This is the first time in Chile that an educational establishment has been fined for not recognizing gender identity. Before this process, the Superintendence did not include "gender identity" as a prohibited basis of discrimination in its forms, complaints records and online platform. It has since been incorporated.
- In contrast to the arguments of the

Superintendence, on January 22 2016, the civil court of Colina dismissed the claim, reasoning that the school had not discriminated against the student. Even though the court recognizes gender identity, it requires formal recognition, for example, by the Legal Medical Institute. The child's mother appealed the court ruling on January 30 2016, and the process is underway.

The decisions are contradictory and, although the lawsuit brought against the school for discrimination is pending a final decision, it is worth mentioning the arguments used by the Superintendence of Education to support its decision to fine the school for arbitrary discrimination:

### **Claim No. Case 36470**

The first charge in the claim states that the school establishment does not guarantee a just process to regulate relationships among members of the school community. The charge states that the educational institution does not correctly apply the school's rulebook in spite of being under an obligation to promote respect and equal opportunities for all members of the community, as established in the anti-discrimination law, by: 1) not subjecting any individual to arbitrary discrimination due to her or his nationality, illness (HIV or other), race, gender, social class, political, moral or religious convictions, or for any other social or personal condition; and 2) providing compensatory measures that guarantee real and effective equal opportunities."<sup>40</sup>

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40 Cf. Superintendence of Education, Claim no. CAS 3647, Charge 1: Finding No: 73. Supporting argument number: 73.02 ESTABLISHMENT DOES NOT APPLY INTERNAL REGULATION CORRECTLY. The facts that this complaint is based on

The second charge in the claim<sup>41</sup> states that the school fails to guarantee the rights of the community members, and arbitrarily discriminates against trans minors by refusing to consider the full inclusion of the trans child. This point is of utmost importance given that respect for gender identity is a fundamental part of Chilean anti-discrimination law and of the international treaties ratified by Chile. The fundamental purpose of Law No. 20.609/2012 (LAD), is “the efficient respect for the law whenever an act of arbitrary discrimination is committed, in particular when such an act is on the basis of race, ethnicity, nationality, socioeconomic status, language, ideology, political opinion, religion or creed, unionizing or participation or not in trade associations, sex, sexual orientation, and gender identity. The case reported applies within this context...”

As the discrimination case is currently before the Court of Appeals following the civil court’s decision, it is important to note that, in 2015, the Chilean State was under review by the UN Committee for the Rights of the Child (CRC), and the Committee included in its final observations concerns for the situation of trans and

intersex children in the country.<sup>42</sup> As a result of these observations and advocacy by local activists,<sup>43</sup> the Ministry of Health issued an executive order to stop medical interventions for intersex children.

## The Executive Decree on Intersex Children

In a major victory for intersex rights, on December 22, 2015, the Chilean Ministry of Health ordered the suspension of “normalizing” treatments for intersex children, including irreversible surgery, until they reach an age when they can decide on their own. The executive order precedes any existing legislation on the topic.<sup>44</sup>

Activists such as Andrés Rivera Duarte and Camilo Godoy from the Observatorio de Legislación y Derechos Humanos (the Observatory) were the driving force behind this reform, as well as the protocol of services for intersex children, which the Ministry is currently studying for implementation. In October 2015, OutRight Action International and the Observatory presented a shadow report before the CRC in Geneva, denouncing the situation of trans and intersex children in the

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are consigned in edict 299, in audit act No. 151302976 (page 3) and the regulations that the school did not fulfill are: Title I 1.1 Rationale, Article 8, paragraph 3, promote respect for people’s rights. Title II 2.1. Purpose and Scope of the Regulation, Article 22. The statute transgressed: Article 46, letter f. Ministry of Education, Law-Ranking Decree No. 2 of 2009. Article 8 of the Ministry of Education, Supreme Decree No. 315 of 2010. Type of offence: Minor offence, Article 77, letter c of Law 20,529. A scanned copy of the Claim is on file with OutRight Action International.

41 Ibid., Supporting argument number: 74.03. The facts that this complaint is based on are consigned in edict 299, in audit act No. 151302976 (page 3) which points out that the “Educational institution violates regulations established by the following legal bodies, A) Ministry of Education Law-Ranking Decree No. 2/2009, the existing international treaties ratified by Chile and Anti-discrimination Law 20.609/2012.

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42 Cf. Observatorio de derechos humanos y legislación de Chile and the International Gay and Lesbian Human Rights Commission. Situation of Trans and Intersex Children in Chile. Report submitted to the United Nations Committee on the Rights of the Child on the occasion of the 70th Session to consider Chile’s joint Fourth and Fifth Periodic Report. 2015. Available at: <https://www.outrightinternational.org/sites/default/files/CHILE%20CRC%20SESSION%202015%20FINAL%20.pdf>

43 MORGAN. Chilean Ministry of Health issues instructions stopping “normalizing” interventions on intersex children. OII Australia. January 11 2016. Available at: <https://oii.org.au/30250/chilean-ministry-stops-normalising/>

44 CHILEAN HEALTH MINISTRY Circular No. 18, Instructs on certain aspects of healthcare services for intersex children. Santiago de Chile, December 22, 2015.

country. The report urged that the situation of trans and intersex children be addressed as “a cross-cutting issue relevant to substantive rights protection.” On that occasion, the CRC, in its concluding observations, reviewed the report’s recommendations and expressed its concern about the rights of intersex children: “... the Committee is seriously concerned about cases of medically unnecessary and irreversible surgery and other treatment on intersex children, without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases.”<sup>45</sup>

In this particular case, the Chilean State is responding to the local and international call to guarantee the rights of intersex children.

## Name and Sex Changes in the Civil Registry

There is currently no specific regulation in Chile that allows trans people to change their names and surnames. Law No 17.344 authorizes such a change in some cases and in the presence of certain factors, such as, for example, being exposed to a risible or humiliating name. In general, such changes are made at the judge’s discretion and not as a guarantee of a fundamental right.

Accessing name change and sex rectification requires the claimant to file a petition in a civil court together with psychological and

psychiatric diagnoses and certificates attesting surgical or pharmacological treatments. These include hysterectomy (removal of the female reproductive organs), mastectomy (removal of the breasts) and hormone therapy in trans men, and breast implants, vaginoplasty, and hormone therapy for trans women. Civil courts request claimants to present medical examinations, diagnoses and proof of surgeries from the Legal Medicine Institute in order to proceed with the rectification. In court, trans claimants are also required to present witnesses to testify that s/he lives as a woman or man, and that s/he has been known and recognized by her or his female or male name for at least five years. The court makes the final decision, and may reject both requests, only approve the name change and deny sex rectification, or modify both.

Civil courts have made decisions that recognize a name change, but that refuse to rectify the sex in the birth certificate using the following arguments: “Although the claimant presents a female sexual identity as a transsexual (sic), the medical report... states that his genitals are masculine and normally developed, concluding that the physical exam corresponds to that of an adult male. According to this court, in such conditions, the request for a sex change from the registered sex is not admissible.”<sup>46</sup>

Other civil court decisions have utilized a restrictive interpretation of Law N°4.808, by establishing that a change of sex or its rectification is restricted to newborn girls or boys and in relation to the genitals they are born with.<sup>47</sup>

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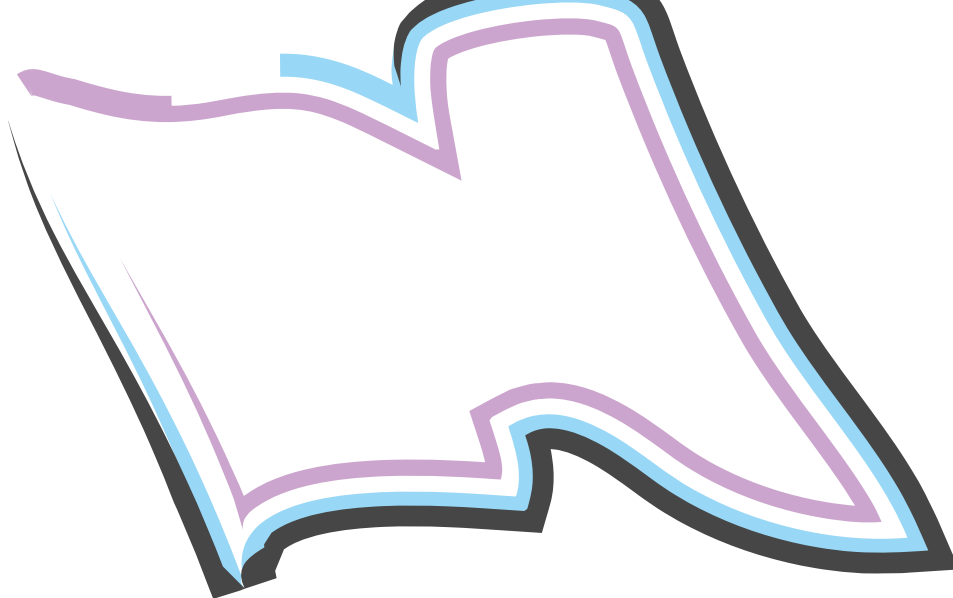
45 70th Session to consider Chile’s joint Fourth and Fifth Periodic Report. Concluding Observations: E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a), and 39); Freedoms from all forms of violence; Harmful practices, Article 48.

The full document is available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhK-b7yhssK3M5T%2fDPYl5MHGhtMS6B4wdmjWcNAPsrS0KS-JLt8kAqr1bgXOwnr41neD%2fuDwW0SCZFfVUScvcMRKqzD-1lJKeGciZAvhTPZCWygkySsf01>

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46 2° CIVIL COURT OF TALCA. Causation “Sepúlveda Arenas Juan” Role N° 109-2009.

47 3rd. CIVIL COURT OF TALCA. Causation “Cruz Cruces”



# Education

**Everyone has the right to education, without discrimination, including on the basis of gender identity. In international law, the right to education is enshrined in the UDHR at Article 26 and in the ICESCR at Article 13.**

Principle 16 of the Yogyakarta Principles provides that States should take all necessary measures “to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity.”<sup>48</sup>

**“I had a letter from a psychologist; they read it and said, ‘No, you can’t study here, we don’t receive people like you here.’”**

The Chilean Constitution guarantees the right to education for all persons regardless of their social, ethnic, religious, economic and cultural conditions. Children and teenagers have a right to access free public pre-school, primary and secondary education. Students in municipal or private subsidized establishments have the right to know all of the requirements and conditions for application. There are limitations to the right to education in Chile;<sup>49</sup>

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Role N° 13-2010: “Concerning the sex change process filed, the petition can only be dismissed, due to the references made in Article 31, paragraphs 1° N° 2 and paragraph 2° of Law N° 4.808 on Civil Registry to the sex of a person being closely connected to that of a newborn baby. This is why, with respect to said chapter, the present case must be rejected.”

48 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, see *supra* note 7.

49 For example, as established in the Political Constitution of Chile, Article 19 on the freedom of education: “... the freedom of education has no limitations, other than those imposed by moral standards, good practice, public order, and national security.” Available at: <http://www.leychile.cl/Navegar?idNorma=242302> This restriction has been criticized by legal activists, and legal theorists such as LGBTI groups, due to the fact that it bases the possible access to a fundamental right on the vague notion of “moral standards and good practice.”

however, the country has already determined that student pregnancy cannot be regarded as an impediment to entering or remaining in an educational establishment, and that students with disabilities have the right to demand the necessary adjustments in the curriculum, infrastructure and materials to guarantee their access to education.

The Chilean education system endeavors to promote respect for the diversity of institutional educational projects and processes, as well as the cultural, social and religious identity of the pupils. It also proposes the inclusion of students from different social, ethnic, religious, economic and cultural backgrounds. The system should also recognize diversity of culture and origin, considering language, worldview and history.

However, for trans people, discrimination in the education system is constant and begins early on, manifesting itself in anything from the obligation to wear male or female uniforms and undertake male or female activities, to institutional and peer bullying.

“I was completely discriminated against, I couldn’t study. I couldn’t develop like a normal person. I was discriminated against when I wanted to study. I tried to register at different schools and I couldn’t have access because of the way I am. They said: ‘No, you can’t because you are a little ‘faggot.’”<sup>50</sup>

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See also, Shadow Report presented to the UN Human Rights Committee, *supra* note 12. The reference to moral standards to access a fundamental right is vague and often a source of injustice for non-gender conforming individuals.

50 Dominic, trans woman in an interview for OutRight Action International, December 2014.

Trans women are constantly harassed in schools, which makes them drop out, limiting their access to technical, university or professional training:

“When I was already an adult, I went to enroll to get my secondary education and they didn’t let me. I had a letter from a psychologist; they read it and said, “no, you can’t study here, we don’t receive people like you here.”<sup>51</sup>

Although trans men also experience specific types of discrimination, its frequency and nature are different from the discrimination experienced by trans women:

“It is true that we trans men are also discriminated against at school, but it is also true that it happens more to trans women. A ‘masculine woman’ is more easily accepted than an ‘effeminate man,’ so the majority of trans men are able to complete schooling, but trans women are brutally discriminated against and they end up leaving the school system. The biggest challenge is the uniform, where, in the case of a boy, he has to use a girl’s uniform.”<sup>52</sup>

There have been no specific studies in Chile on intimidation among students and/or from teachers and other school administrators against trans people. However, the Ministry of Interior and the Ministry of Education have carried out studies on violence in schools in general, showing that 51.5% of teachers and 34.8% of students perceive a high prevalence

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51 Ibidem.

52 Source: Andrés Rivera Duarte, trans man and gender identity consultant.



of aggressive behavior. Some 96.1% of the students report the existence of psychological aggression; 83.3% report physical aggression; 41.5%, report attacks against private property; 28.2% report the existence of a permanent threat; 12.5% report threats with weapons; and 4.7% report sexual aggression. Some 82.3% report having been attacked by another student. The study also highlights that, the lower the quality of school coexistence, the higher the prevalence of aggressive behavior. As Chile has high levels of domestic violence and offensive cultural practices, such as jokes, that reify stereotypes and favor intimidation, these figures support the hypothesis that the prevalence of intimidation among students in the country are probably higher, as they suffer from family-related stress and parental coercive practices.<sup>53</sup>

Despite the difficulties and cultural resistance, activists have managed to train and raise awareness among teachers, students and school administrators. A number of schools in Chile, both private and subsidized, have implemented policies of inclusion and respect for gender identity in textbooks, uniforms, restrooms, classrooms, sports and extracurricular activities. A few of these schools are in Santiago and in Peñalolen; other such schools are located in Quilicura, Las Condes, Peñaflor, Coyhaique, Valparaíso, Talca, San Clemente, and Rancagua.<sup>54</sup>

“The most prominent educational establishment,

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53 CHILEAN MINISTRY OF THE INTERIOR and MINISTRY OF EDUCATION. Principales resultados del estudio nacional de violencia en el ámbito escolar. [Main results of the national study on violence within the school environment], 2005. The full document is available at: [http://www.seguridadciudadana.gob.cl/filesapp/pres\\_ppt.pdf](http://www.seguridadciudadana.gob.cl/filesapp/pres_ppt.pdf)

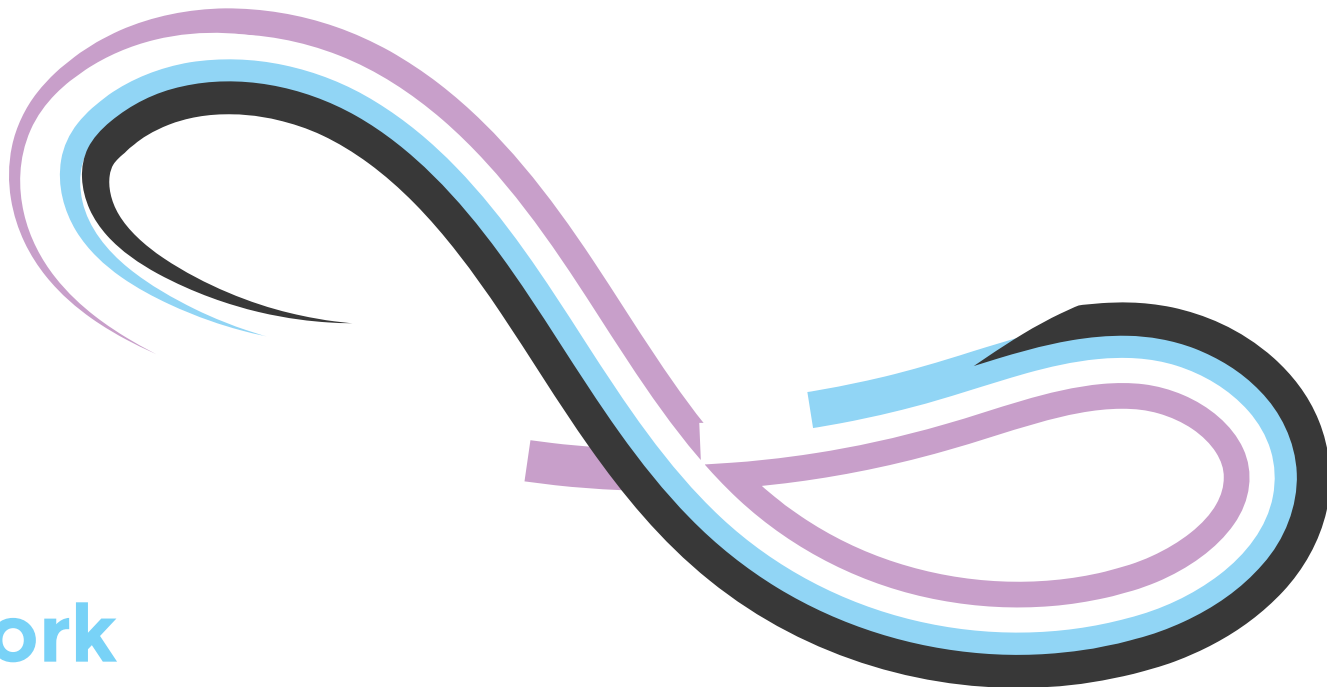
54 Source: Andrés Rivera Duarte, trans man, gender identity consultant.

when it comes to trans inclusion in schools in Chile, is probably the El Trigal-Maipú School (Colegio El Trigal-Maipú), located in the commune of Maipú,” says Niki Raveau, vice-president of the Fundación TranSítar. “Selenna, a seven year-old trans girl, entered this school two years ago. Selenna registered at the school without hiding her gender identity and without a certificate or psychological “diagnosis” as a requirement. At the beginning, only the principal and her immediate teachers were informed of her trans identity. It was decided that it would be in Selenna’s hands to show the way, and she decided, during the first year, to share her experience with her classmates. Selenna has never experienced any conflict or experienced bullying; on the contrary, she has been loved and respected by the entire school community.

At the end of 2015, Selenna was chosen by her own classmates – as a result of her charisma and friendliness, and not particularly because of her trans identity – as the School Queen. In 2016, María, a nine-year-old trans girl who experienced a series of institutional obstacles before managing to happily pursue her education, entered the same school. As far as we know, El Trigal-Maipú School is the only establishment that has accepted two trans children and has provided them with an optimal school environment. Their inclusion followed the path of respect and recognition of human rights, without questioning or expressing prejudice of any kind. Most importantly, the school takes into account the central voices of Selenna and María.”<sup>55</sup>

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55 Niki Raveau in personal communication/conversation with OutRight Action International, March 22, 2016.



## Work

**Everyone has the right to decent and productive work, without discrimination, including on the basis of gender identity.**

In international law, the right to work is enshrined in the UDHR at Article 23 and in the ICESCR at Article 6. Principle 12 of the Yogyakarta Principles provides that States should take all necessary measures “to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration.”<sup>56</sup>

The Ministry of Labor and Social Security is responsible for guaranteeing labor rights in Chile. The situation of labor rights for trans people is characterized by the absence of public policies, a lack of commitment from company owners to offer jobs to trans people, the lack of a public institution that trains trans people and promotes vocational training, the abuse imparted by employers, and the inexistence of regulations to guarantee job security.

Access to work is very limited, in particular for trans women. Their options are restricted to hairdressing or sex work.

**I went to look for work on a farm, to pick grapes, but the manager told me that they didn't hire faggots because it made their vines dry up.**

“The old wives’ tales people believe are harmful to us. I went to look for work on a farm, to pick grapes, but the manager told me

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<sup>56</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, see *supra* note 7.



that they didn't hire faggots because it made their vines dry up."<sup>57</sup>

...

"I have to look for a low down job, like cleaning toilets or houses. I clean the restrooms in a hospital at night. I would have liked to continue studying and become a professional, a secretary for example."<sup>58</sup>

Trans men face different challenges, some have testified to having worked in a particular place for no more than a couple of months in order to avoid entering into a formal contract, which would require them to show their ID.

"I told someone at work, and obviously they all found out. People started to criticize me because of who I am, to question my work because of who I am, so I thought everyone liked me, I was the youngest on the job (Hospital ER), but listening to them talk, and they would all still smile at me, but talk behind my back and say that I was the worst person on this earth. The fact that they questioned me as a person made me stronger."<sup>59</sup>

"I can't change my job, I think that if I go to an interview, they are going to call me by my female name, and I will appear and this will be a reason to expel me from the process immediately. So I don't want to change jobs, because having to go and explain things somewhere else... No, regardless of the fact that they make my life hell here, I still wouldn't want to change."<sup>60</sup>

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57 Victoria Yañez, trans woman in interview for OutRight Action International, December 2014.

58 Dominic Cifuentes, trans woman in an interview with OutRight Action International, December 2014.

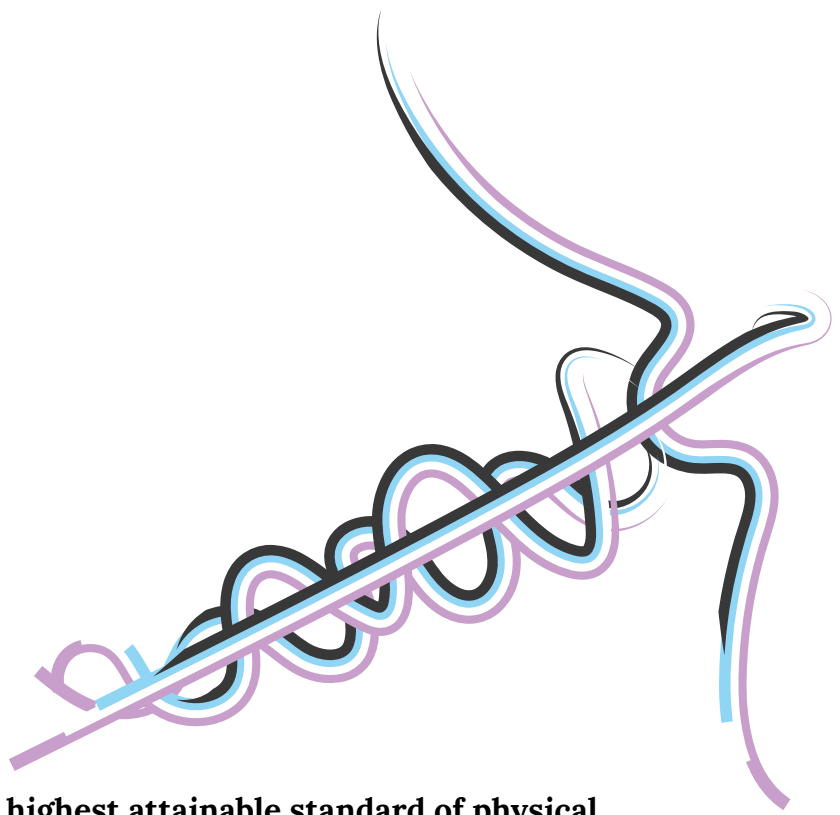
59 Máximo Castro, trans man in an interview with OutRight Action International, December 2014.

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60 Trans man, NN, in an interview with OutRight Action International, December 2014



# Health



**Everyone has the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, without discrimination, including on the basis of gender identity.**

In international law, the right to health is referenced in the UDHR at Article 25 as part of the right to an adequate standard of living, and enshrined in the ICESCR at Article 12. Principle 17 of the Yogyakarta Principles provides detailed guidance on the right to health without discrimination on the basis of SOGI, including that States should “[f]acilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support.”<sup>61</sup>

**Many trans women see transition as unattainable due to their difficult financial situations. As a result, they seek solutions on the “black market” following the advice of other trans women who have transformed their bodies without medical supervision.**

The Chilean Constitution guarantees free and equal access to healthcare services for the purposes of health promotion, protection, recovery and rehabilitation. It is the State’s duty to guarantee the execution of health services, in both the public and private systems. Each person can choose the health system they wish to belong to.

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<sup>61</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, see supra note 7.

## Circular 21 and the Vía Clínica

In particular, national health policies Circular 21<sup>62</sup> and the Vía Clínica<sup>63</sup> regulate healthcare for trans people. Circular 21 regulates the services available to trans individuals in the public health system. The “Clinical Pathway [Vía Clínica] for the body adaption/alignment of people with incongruence between physical sex and gender identity and for sexual diversity”,<sup>64</sup> or Vía Clínica, is part of the National Program for the Prevention and Control of HIV/AIDS and Sexually Transmitted Diseases (STDs).

The Program seeks to strengthen the public healthcare system by providing specialist outpatient care and surgical intervention when required. The *Circular* is a healthcare guide for trans people and a strategy to promote LGBTI-friendly hospitals in the Public Healthcare Network.

Activists have criticized the *Circular* for the following reasons:

- The fusion between HIV/AIDS on the one hand, and comprehensive health care required by trans people, on the other. This fusion damages, stigmatizes and fosters discrimination in both spaces;
- It pathologizes transgender identity by

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62 CHILE. MINISTRY OF HEALTH. Circular N° 21 regarding healthcare for trans people in public health institutions. Santiago, June 2012. Full text available at: <http://www.indh.cl/wp-content/uploads/2012/08/Circular-21.pdf>

63 CHILE MINISTRY OF HEALTH. NATIONAL PROGRAM FOR THE PREVENTION AND CONTROL OF HIV/AIDS and STDs. “Vía Clínica para la adecuación corporal en personas con incongruencia entre sexo físico e identidad de género.” [Clinical Pathway for the body adaption/alignment of people with incongruence between physical sex and gender identity]. June 2010. Document available at: <http://web.minsal.cl/portal/url/item/d126e58ba4cb53f5e040010165017912.pdf>

64 Ibid.

not considering a person’s social name, and referring to a gender identity *disorder* rather than “gender incongruence”;

- The State has not assigned a budget for implementation;
- Trans people do not have adequate information about its benefits;
- There are still a number of health centers that do not know about the *Circular* and the *Vía Clínica*.

Dr. Guillermo Macmillan, for example, works in a public hospital and has extensive experience in gender affirming surgery. He has undertaken more than 500 operations, and he currently performs one surgery per month, with a waiting list of three years. Although he is training teams in two other regions of the country<sup>65</sup> (in the cities of Talcahuano and Serena), he does not receive State funds to provide broad training coverage for the country’s health professionals, and he is not financed to carry out surgery in State hospitals.

The *Vía Clínica* includes the following services:

### Mental Health

- Initial assessment.
- Psychotherapy (may include ‘Real-Life Experience’): complete adoption of the new gender role and living daily life in the experienced gender identity.

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65 See “Vía Clínica for the body adaption/alignment of people with incongruence between physical sex and gender identity”, p. 14: “Services networks for surgical interventions. Nationally, there is only one identified team with the necessary experience to carry out gender affirming surgery (Urology Service, Carlos Van Buren Hospital, Valparaíso)”. For the full document see supra note 50.

- Counseling and follow-up care (may include ‘Real-Life Experience’).
- Confirmation of eligibility criteria and provisions: hormonal body modification; prescription and control of feminization / masculinization therapy; surgical body modification; chest remodeling; hysterectomy; and oophorectomy (female to male adaptation); orchidectomy; sex reassignment; facial feminization; and other interventions.<sup>66</sup>
- Demonstrate progress in the consolidation of their gender identity.
- Demonstrate progress in solving problems related to work, family, and interpersonal relationships, significantly improving mental health, and having a satisfactory level of control over substance abuse and suicidal ideation;
- Follow the hormonal treatment plan responsibly.<sup>68</sup>

## Gender Affirming Surgery

The *Vía Clínica* contemplates a number of requirements, which hinder access to gender affirming surgery.<sup>67</sup> Patients must:

- Be over the age of 18;
- Undergo 12 months of prior and continuous hormone therapy, unless otherwise medically advised, for a particular patient;
- Have 18 months of continuous and successful ‘Real Life Experience’;
- Have undergone psychotherapy treatment when required by a mental health professional, according to an established schedule;
- Have knowledge of costs, hospital stay requirements, potential complications, and post-surgery rehabilitation requirements for the different surgical options;
- Demonstrate their willingness to undergo surgery;

<sup>66</sup> Ibid, p. 3

<sup>67</sup> Eligibility criteria and provisions regarding surgical body modification (genital reconstruction). Adapted from the WPATH healthcare standard. See MEYER, W., et al. The Harry Benjamin International Gender Dysphoria Association’s Standards of Care for Gender Identity Disorders, 6th version. 2001.

## Hormones

Many trans women see transition as unattainable due to their difficult financial situations. As a result, they seek solutions on the “black market” following the advice of other trans women who have transformed their bodies without medical supervision. This practice in particular involves the use of hormones, mineral oil and industrial silicone. Such improvised treatments put the health and lives of these women at great risk as they tend to be undertaken without the required levels of hygiene, by people without medical experience, and without access to subsequent assessment and monitoring.<sup>69</sup>

<sup>68</sup> See “Vía Clínica for the body adaption/alignment of people with incongruence between physical sex and gender identity”, p. 11, Table 5. For the full document, see supra note 50.

<sup>69</sup> Several articles address this issue. See: THE CLINIC. The brutal methods of clandestine plastic surgeries: To die for an ass. The Clinic Online, July 31 2011. Available at: <http://www.theclinic.cl/2011/07/31/los-brutales-metodos-de-las-cirugias-plasticas-clandestinas-morir-por-un-poto/> CONDORI, Iván. Transvestite dies because of using industrial silicone]. La Razón, April 14 2012. Available at: [http://www.la-razon.com/index.php?url=/sociedad/Muere-travesti-uso-silicona-industrial\\_0\\_1595840407.html](http://www.la-razon.com/index.php?url=/sociedad/Muere-travesti-uso-silicona-industrial_0_1595840407.html) SOYANTOFAGASTA. SML (Medical Legal Service) of Antofagasta confirmed that ‘La Chichi’ died due to the use of industrial silicone. SoyChile, September 14 2014. Available at: <http://www.soychile.cl/Antofagasta/Policial/2014/09/14/274473/SML-de-Antofagasta-confirmando-causacion-de-muerte-de-La-Chichi-fue-por-el-uso-de-silicona-industrial.aspx> LA MAÑANA. Transvestite died after using industrial

The risk of death through the application of industrial oil is constant, be it from subsequent infections due to lack of hygiene in the procedure, heart attacks, or not having access to medical care in case of complications.

The *Vía Clínica* is available for all trans people, but because the State has not assigned a specific budget to it, it runs on scarce hospital resources and the benevolence of hospital directors. When free or affordable gender affirming treatments are not available, trans men, for instance, need to pay a private surgeon around \$5,000,000 to \$6,000,000 Chilean pesos – approximately US\$7,000 to US\$8,500<sup>70</sup> – for a mastectomy.<sup>71</sup>

In practice, trans men tend to use compression corsets to flatten and reduce the breasts, which has significant health risks. There are also no follow-up protocols for hormone therapy to observe the side effects of the treatment. The *Vía Clínica*, however, stipulates these protocols.<sup>72</sup> Trans men tend to be fearful of being discriminated against and embarrassed when it comes to going to a gynecologist, and even more so if they have to have a PAP smear. There is a need for empathetic and respectful medical staff, who are trained in trans healthcare.

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silicone. Chilevision, October 21st 2013. Available at: <http://www.chilevision.cl/matinal/casos-denunciados/travesti-murio-por-tras-ponerse-silicona-industrial/2013-10-21/125257.html>

70 These are the approximate costs in 2016.

71 Information delivered by Andrés Rivera Duarte, gender identity consultant, who has been an advocate for trans issues since 2005. Andrés met with the Director of the Rancagua Hospital in 2013, in order to implement mastectomies as a service for trans men. The hospital agreed on offering two operations per year but since 2014, only one operation has been performed.

72 See “*Vía Clínica* for the body adaption/alignment of people with incongruence between physical sex and gender identity”, *Risks Associated to Hormone Treatment*, pp. 8-9. For the full document, see *supra* note 50.

The Ministry of Health did not take into account the LGBTI movement’s<sup>73</sup> criticisms of the *Vía Clínica* prior to proceeding with its implementation. However, due to budget restrictions, the program has been concentrated in the Van Buren Hospital in Valparaíso, the Higuera Hospital in Talcahuano, and the Consultorio Número 1 in Santiago, offering services in endocrinology, delivery of hormones, psychological support, and assessments. The Consultorio has worked intermittently due to a lack of health professionals and resources, but even so, it provides health services and hormones for trans people.<sup>74</sup>

Mental health professionals do not know enough about trans issues, and this ignorance translates into offers for reparative therapy, and discrimination in the service. Trans people who request psychological attention, instead of receiving professional care, are generally referred to other trans people and/or civil society organizations in order to receive guidance and help.<sup>75</sup>

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73 Fundación Iguales and Organización de Transexuales por la Dignidad de la Diversidad (OTD) notified the Ministry about their apprehension and unconformity with the *Vía* and the Circular. Information available at: <http://www.iguales.cl/fundacion-iguales-valora-nueva-circular-de-minsal-sobre-trato-a-personas-trans/>

74 There is no official data on how many trans people attend the facilities as the legal records of the patient prevail over recognition and statistical records of gender identity.

75 Information delivered by the Gender Identity Advisor Andrés Rivera Duarte. In conversations with trans people, the most common complaint is the low quality care of health service providers and ignorance regarding the Circular.



## Detention Centers

**Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment.**

In international law, the right to be free from torture and other ill treatment is enshrined in the UDHR at Article 5 and in the ICCPR at Article 7. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – which Chile has also ratified – requires states to take effective measures to prevent torture, while the prohibition against torture is also well established as part of international customary law. The Basic

Principles for the Treatment of Prisoners, adopted by the UN General Assembly in 1990<sup>76</sup> state that “[a]ll prisoners shall be treated with respect due to their inherent dignity and value as human beings.” Principle 10 of the Yogyakarta Principles provides that States should take all necessary measures “to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts.”

**The gender identity of trans women in male prisons is confused with sexual orientation and they are referred to as ‘homosexual’, and unlike heterosexual men and women, they are denied the right to conjugal visits.**

The UN Special Rapporteur on torture has noted that in detention facilities, there is usually a strict hierarchy, and that those at the bottom of the hierarchy, such as LGBT persons, suffer double or triple

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<sup>76</sup> See UN General Assembly, Basic Principles for the Treatment of Prisoners. Resolution 45/111, 14 December 1990, A/RES/45/111. Full text available at: <http://www.un.org/documents/ga/res/45/a45r111.htm>



discrimination.<sup>77</sup> The Special Rapporteur has also highlighted the susceptibility of trans women prisoners to physical and sexual abuse if placed within the general prison population.<sup>78</sup>

In Chile, trans people in prisons continually fall victim to the authorities' ignorance of their gender identity, as well as the authorities' and other inmates' lack of respect towards them. The gender identity of trans women in male prisons is confused with sexual orientation and they are referred to as 'homosexual', and unlike heterosexual men and women, they are denied the right to conjugal visits. In 2013, the Chilean National Human Rights Institute carried out a study in twelve penitentiary units to review the situation of the trans population.<sup>79</sup>

The study sheds light on discrimination against trans people by authorities, highlighting, for example, that trans women are detained in male prisons and are treated as men; that they are denied access to their clothes, makeup, medicine and hormone treatments; that they are victims of severe aggression; that searches are used as a means to violate their rights, and that it is only in certain cases that the prison administrator approves a little private space reserved for them.

This treatment is not in compliance with the Basic Principles for the Treatment of Prisoners, in that it clearly undermines the dignity of trans women affected, while some of it may amount to a violation of the prohibition against ill treatment.

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<sup>77</sup> See paragraph 231, UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum, 5 February 2010, A/HRC/13/39/Add.5. Full text of the Report available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf)

<sup>78</sup> See paragraph 23, UN General Assembly, Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, 3 July 2001, A/56/156. Full text available at: <http://www.un.org/documents/ga/docs/56/a56156.pdf>

<sup>79</sup> CHILEAN NATIONAL HUMAN RIGHTS INSTITUTE. Estudio de las Condiciones Carcelarias en Chile [Study of Chile's prison conditions]. Santiago, November 2013. The full document is available at: <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/639/Estudio%20general?sequence=4>



# Recommendations

**In conclusion, as this report has shown, while Chile enjoys a reasonably robust human rights framework – though the Constitution and Anti-Discrimination Law are flawed – trans people still face many obstacles in the enjoyment and exercise of their human rights.**

The Gender Identity Bill – if it becomes law – would go a long way to ensuring that gender identity is recognized as a human right, and would help guarantee equality before the law for trans people and protect them from discrimination, which they currently suffer in the areas of health, education and work.

Outright Action International makes the following recommendations to the Chilean authorities, to improve respect for the human rights of trans people – and, where relevant, intersex people – in the areas considered in this report:

## Human Rights Framework

- Amend the Anti-Discrimination Law to bring it in to line with Chile's international human rights obligations, removing the hierarchy of rights;
- Provide explicit legal protection against discrimination on grounds of gender identity and expression in all areas;

## Legal Gender Recognition

- Enact the gender identity bill to ensure the right to legal gender recognition, incorporating the legal recognition of trans and intersex girls, boys and teenagers as an administrative process;

## Health

- Depathologize gender identity, and eliminate pathologization as a requirement to access transition and gender reassignment medical procedures;
- Borrowing from Principle 17 of the Yogyakarta Principles, facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;
- Create a mental health support program to care for trans individuals;
- Create a pilot healthcare program for trans men, involving a multi professional team of gynecologists that have sound knowledge of trans health issues, plastic surgeons to perform mastectomies, psychological support for the gender confirming processes, endocrinologists for hormone treatments, and which respects the individual's personal decisions on the processes, changes and their bodies;
- Carry out research on the side effects of using testosterone in biologically female bodies, with and without hysterectomies;
- The Health Ministry should carry out a feasibility study, for the applicability of the *Vía Clínica*;
- The Healthcare Program for Trans People should be incorporated into the Health Ministry's Life Cycle Program and not the HIV/AIDS program;
- The Health Ministry should train its functionaries and professionals on topics related to gender identity and the applicability of *Circular No. 21*, to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's gender identity.
- The Health Ministry's Life Cycle Program should include workshops and campaigns to teach trans women about the harmful effects of using mineral oil, silicone and industrial oil in their bodies as well as the harmful effects of self-administration of hormones without medical supervision;
- In line with the suspension of "normalizing" treatments for intersex children, the Health Ministry should create a health care protocol for intersex newborns, based on the highest human rights standards, and respecting the best interest of the newborn;
- The registration system for newborns should include the intersex variable in its forms, and data should be collected as a basis for developing new public policy;
- The Health Ministry should create a multi-professional team to accompany intersex newborns and their families;
- The *National Council for Children* and the *National Service for Minors* should develop public policies to protect the human rights of intersex and/or ambiguous sex and trans children;

- The Health Ministry should monitor the situation of intersex and/or ambiguous sex people that have been subject to gender assignment surgery, and provide them with the professional support that they and their families require. The Ministry should monitor the current implementation of the executive decree that prohibits surgical interventions in intersex children;
- The Health Ministry should create a healthcare unit for intersex and trans children and teenagers, with the support of endocrinologists, inhibitors, psychologists and family;

## Education

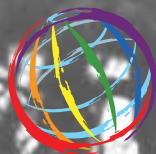
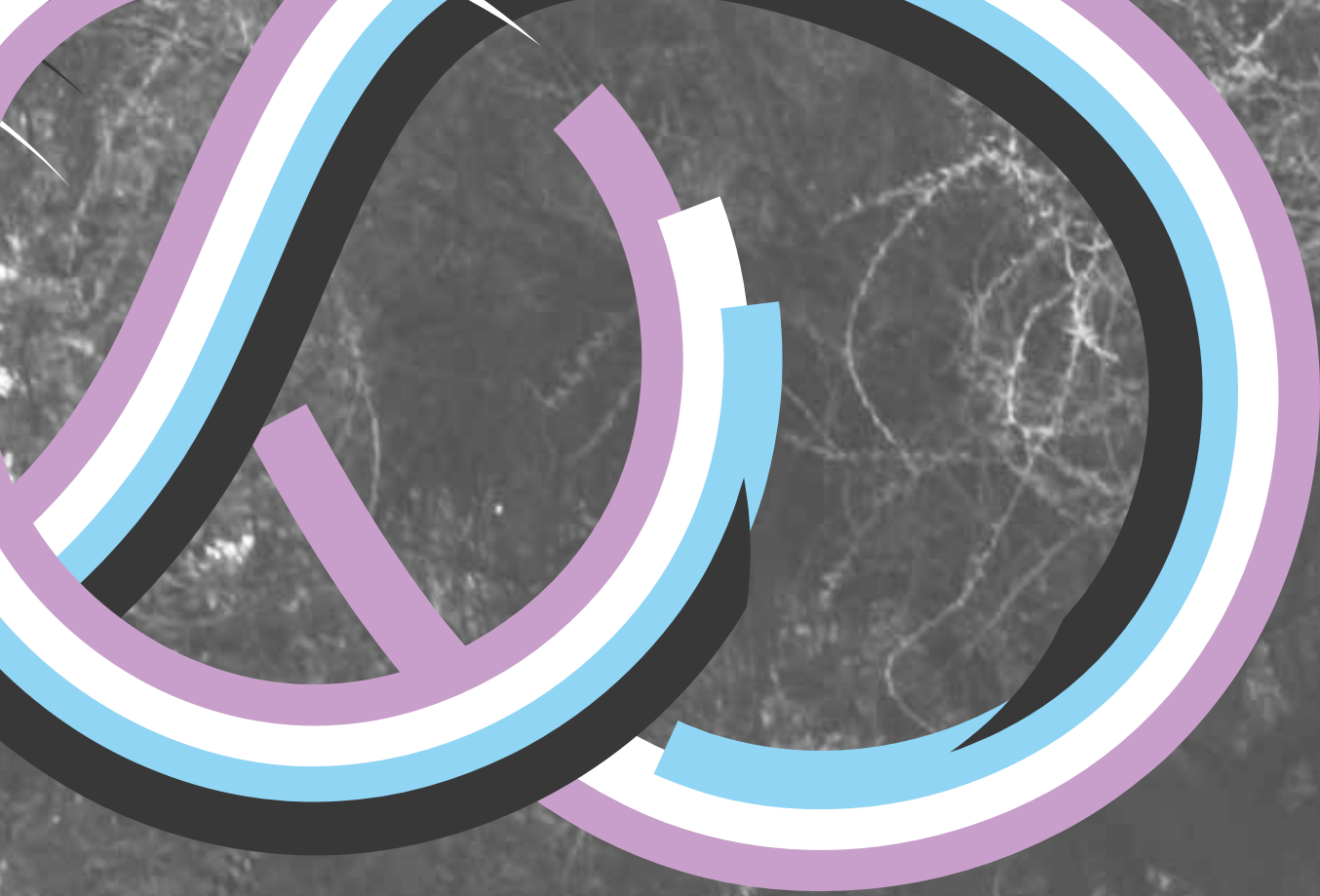
- Borrowing from Principle 16 of the Yogyakarta Principles, continue to take all necessary legislative, administrative and other measures – to include the revision of school rulebooks – to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of gender identity;
- The Ministry of Education should include trans children in all of its educational programs and develop, through the *Centro de Perfeccionamiento* (Learning Resource Center), a teacher-training program to enhance understanding of and respect for gender identities;
- The Ministry of Education should develop policies of respect and integration for gender identity, consulting with fathers, mothers and the families of trans girls, boys, and teenagers, and trans people who are experts on the topic;
- The Ministry of Education should instruct, through a formal document, that trans girls, boys and teenagers may wear whatever uniform corresponds to their gender identity and that they should be registered in the school records using the name that corresponds to their gender identity;
- The Ministry of Education should create a Sexual Diversity Unit, in charge of protocols, policies, training, follow-up and monitoring on respect for gender identity in educational institutions;

## Work

- Borrowing from Principle 12 of the Yogyakarta Principles, take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;
- Create a job insertion program for trans people by implementing a grant system, whereby the State pays the employer 50% of the trans person's salary;
- The Ministry of Education should create protocols for the respect of gender identity in public and private businesses and institutions, and it should provide opportunities for trans people to participate in formal learning and adult education programs to advance their work skills;

## Detention Centers

- Create a registry protocol for imprisoned trans women, to allow the collection of disaggregated data to monitor their treatment;
- Follow-up and monitor the situation of imprisoned trans people through the Gendarmerie Human Rights Department, and document this in annual reports;
- Recognize and validate the gender identity of imprisoned trans people and respect their gender expression, so that they have access to make-up, can dress according to their gender identity, can be called by their chosen name, have access to supervised hormone treatments, and enjoy conjugal visits; and
- Undertake programs of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent acts that may violate the dignity of trans people in prison or amount to a violation of the prohibition against torture and other ill treatment.



**OUTRIGHT**  
ACTION INTERNATIONAL

Human Rights for LGBTIQ People Everywhere

TRAN  
SI  
TAR  
FUNDACION  
DE FAMILIARES  
DE NIÑOS Y  
JOVENES TRANS

Selenna, a trans girl. Fundacion TranSitar collection.  
Photo: Lorna Remmele